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THE SENATE OF CANADA

OCT 14 1949

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

to whom was referred the Bill A-5, intituled:
"An Act respecting Bankruptcy."

No. 3

THURSDAY, JUNE 20, 1946

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES:

he Honourable Mr. Justice Urquhart, Supreme Court of Ontario.

r. W. J. Reilley, K.C., Superintendent of Bankruptcy

r. Terence Sheard, representing The Dominion Mortgage and Investments Association.

OTTAWA
EDMOND CLOUTIER
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1946

ORDER OF REFERENCE

EXTRACT from the Minutes of Proceedings of the Senate for 13th May, 1946.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (A-5), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate, and—

The question being put on the said motion.

It was resolved in the affirmative.

Ordered, That the said Bill be referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable ELIE BEAUREGARD, K.C., *Chairman*

The Honourable Senators

Aseltine	Euler	Marcotte
Aylesworth, Sir Allen	Fallis	McGuire
Ballantyne	Farris	McRae
Beaubien (Montarville)	Foster	Michener
Beauregard	Gershaw	Molloy
Buchanan	Gouin	Moraud
Burchill	Haig	Murdock
Campbell	Hardy	Nicol
Copp	Hayden	Paterson
Crerar	Howard	Quinn
Daigle	Hugessen	Raymond
David	Jones	Riley
Dessureault	Kinley	Robertson
Donnelly	Lambert	Sinclair
Duff	Leger	White
DuTremblay	MacDonald (Cardigan)	Wilson—(48).

MINUTES OF PROCEEDINGS

Thursday, 20th June, 1946.

Pursuant to adjournment and notice the Standing Committee on Banking ıd Commerce met this day at 10.30 a.m.

Present: The Honourable Senator Beauregard, Chairman; The Honourable nators Aseltine, Ballantyne, Burchill, Dessureault, Donnelly, Duff, Euler, ouin, Hayden, Howard, Jones, Kinley, Lambert, Leger, McGuire, Molloy, oraud, Paterson, Robertson, Sinclair and White—22.

Bill A-5, "An Act respecting Bankruptcy," was again considered.

In attendance:
The official reporters of the Senate.
Mr. W. J. Reilley, K.C., Supt. of Bankruptcy.

The Honourable Mr. Justice Urquhart, Supreme Court of Ontario, Toronto, ıtario, was heard and submitted a memorandum on several phases of the gislation proposed by the Bill.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy, was heard with spect to the number of failures in Canada during 1945.

Mr. Terence Sheard, Assistant General Manager, National Trust Company, s heard and submitted a brief on behalf of The Dominion Mortgage and vestments Association.

At 12.20 p.m., further consideration of the Bill was postponed.

The Committee then adjourned to Wednesday, 26th June, instant, at 30 a.m.

Attest.

R. Larose,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Thursday, June 20, 1946.

The Standing Committee on Banking and Commerce, to whom was referred Bill A-5, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the Chair.

The CHAIRMAN: Gentlemen, the Honourable Mr. Justice Urquhart, of the Supreme Court of Ontario, has been good enough to come here to give us the benefit of his experience with and study of the Bankruptcy Act, the proposed amendments to which, in Bill A5, have been referred to this committee.

Hon. Mr. JUSTICE GEORGE A. URQUHART, of the Supreme Court of Ontario: Honourable senators, I come here to-day to speak, not on the whole Act but on several phases of it which interest me as a Bankruptcy Judge and to which I think I may say generally that I take exception. I appreciate that as a revision of the Statutes of Canada is due in about 1947, the consolidation of acts is a good thing. Yet, speaking generally, it seems to me that the Bankruptcy Act in its present form is one that, with a few minor exceptions, needs little change. I say that because in the various provinces, after an administration of nearly thirty years, a very considerable body of law has been built up, and the course of the law has been pretty well charted by the efforts of the great Judges who have gone before which make the work of present Judges in Bankruptcy, like myself, comparatively easy. Our Bankruptcy Act, as you all know, is to a large extent based on the Bankruptcy Act of England; and in that country too there has been built up a considerable body of law, which is of great interest to us and to which we look for guidance. So I look rather askance at the somewhat drastic changes that have been proposed in this bill.

I have prepared a memorandum which I would be happy to file if that meets with your approval. (*See Appendix A.*) But there are three phases of the bill that I wanted particularly to discuss with you. I will begin with the third, because it is the one of the greatest interest to the High Court in Ontario and to me as the present Bankruptcy Judge of that Court. I have been sole Bankruptcy Judge of the province now for about eight and a half years. I refer to the putting of twenty-one bankruptcy offences mentioned in section 200 into the exclusive jurisdiction of the High Court, I presume without a jury. It will be noted that section 149 (1) (*f*) which is one of the new clauses, gives the court plenary power and jurisdiction:—

> to arraign, admit to bail, try and punish offenders for offences committed under this act.

The bill does not say that this is to be done without a jury, but I would assume the intention of the draftsman was that a Judge of the highest trial court shall try without a jury persons charged with what I should think are comparatively minor offences, for which the penalty is not more than two years. All of these are indictable offences.

Hon. Mr. HAYDEN: May I ask a question here?

The CHAIRMAN: Yes.

Hon. Mr. HAYDEN: I notice subsection (3) of section 159 provides f appeals to the Supreme Court of Canada. I take it that means appeals—

Mr. Justice URQUHART: From the Court of Appeal, I should think.

Hon. Mr. HAYDEN: In these criminal matters?

Mr. Justice URQUHART: I do not know what that means, to tell the truth.

Hon. Mr. HAYDEN: And then there is a question whether the appeal is to b subject to the ordinary provisions of the Criminal Code with reference criminal appeals.

Mr. Justice URQUHART: I do not know. It is not made clear.

If you look at the notes to section 159, you will see it is stated that the obje of the supplementary jurisdiction conferred under this section is to have a matters or disputes disposed of by the court exercising bankruptcy jurisdictio Then the notes go on to say:—

> The most unsatisfactory phase of bankruptcy administration relat to the punishment for offences enumerated in the act. Experience indicat that in so many cases magistrates and judges of inferior courts do n fully appreciate the significance of the offences as related to commerci morality with the result that creditors at large are almost thorough discouraged by reason of the failure to obtain proper and sufficie penalties for offences committed.

Hon. Mr. HAYDEN: Have you found in your experience that bankrupt offences vary very much in the type of fraud involved as compared with ordina criminal fraud?

Mr. Justice URQUHART: I do not think so on the whole.

You will notice that twenty-one offences are set out in section 200. F instance, these offences include the bankrupt not discovering to the trustee all h property, or not delivering up to the trustee all real and personal property his custody or under his control or not delivering up to the trustee all book documents, papers and writings in his custody, etc. These are all smaller offenc than those of fraud in the Criminal Code.

In the opinion I am about to express I have the concurrence of Chief Justi McRuer of our court, who took a great interest in this matter and collaborat with me in preparing the memorandum on this particular point. This propos legislation we think is not only objectionable in form, as I have indicated in m memorandum, but it would be most difficult to work out. As I have said, sectio 200 creates twenty-one indictable offences. I have not compared them with t offences set forth in the Act, but I think they are very similar.

It is to be noted that they are indictable offences, and that the Crimin Code provides procedure for trial of such offences. The Supreme Court Ontario now has jurisdiction to try indictable offences.

Hon. Mr. LEGER: There is nothing new in section 200.

Hon. Justice URQUHART: No. I am not objecting in the least to secti 200. What I am objecting to is that what may be considered comparative minor offences, and well within the jurisdiction of magistrates and coun judges, should be placed under the jurisdiction of the Supreme Court. In minute or two I will come to another reason that in my view lends added streng to this objection.

The Court of General Sessions has power to try all indictable offences, exce those mentioned in section 583 of the Criminal Code; these must be tried befo a judge and jury of the High Court, and include such grave offences as treaso murder, manslaughter, rape, and a few others. In all cases except a speci class of case, which, if I remember rightly, is provided for by section 598 of t Code, the accused has the right to elect whether he will be tried by a magistra

or by a judge and jury at the general sessions. Should it happen, however, that a man accused of an indictable offence in awaiting trial in the county jail, and a Judge of the Supreme Court is sitting in the county with a jury, he would have to try the accused, even though the offence might be comparatively insignificant. There is no objection to the Supreme Court dealing with the case in those circumstances.

The Supreme Court now has jurisdiction to try these offences only if the Attorney General of the province considers that they are important enough to direct the indictment to be laid and the trial to be by jury.

Is it intended by this section that a man charged with what in the scale of offences is a comparatively minor offence shall be tried without a jury against his will? It is suggested in the notes to the section that offenders would be tried by a judge of the highest trial court, and that thus they would not be deprived of their rights under the ordinary criminal procedure. While that is quite flattering to the judges, it might equally be said that murder, manslaughter or any other grave offence could be tried by such a judge and that would be all right; but the accused would be deprived of his right to be tried by a jury. The only cases in the Criminal Code which are tried without a jury are those dealing with trade conspiracies, section 598.

Hon. Mr. LEGER: Does the section impose an obligation on the bankruptcy judge to hear and interpret offences?

Mr. Justice URQUHART: Not as I read the section.

The purpose of this section appears to be that we should try those offences and the offenders would be deprived of their right to be tried by a jury. If, for instance, a man is accused of armed robbery, he has the right to be tried by a jury. He can be sentenced by a magistrate or judge of the county court, as the case may be, to imprisonment for life and whipping. There are numerous other offences for which life imprisonment can be imposed by county judges, and even by magistrates. Yet by this bill that jurisdiction would be taken away from them and transferred to the highest court in the case of offences not involving a penalty of more than two years.

There is another difficulty. The thirteen judges of the Supreme Court of Ontario have to cover forty-eight counties, and they sit at specified times throughout the province. As I have said, unless we find a man in jail there is no compulsory jurisdiction for us to act except in certain unusual cases. I can see no reason why the magistrates and county judges should not continue to try offenders charged with these indictable offences. If the Attorney-General considers any case of such importance as to warrant it he can order it to be tried before a judge of the Supreme Court.

Hon. Mr. ASELTINE: Has there been any dissatisfaction with the present practice?

Mr. Justice URQUHART: I am coming to that. One of the reasons for the proposed change is that creditors seem to think (*a*) they do not get a sufficient number of convictions, and (*b*) that the penalties on conviction are not adequate. Accordingly, there has been a tendency on their part to criticize the present procedure. Speaking for myself, I certainly will not convict a man who in my opinion is not guilty, neither will I impose a penalty that I do not think is justified by the nature of the offence, just because creditors might think that a bankrupt ought to be convicted and punished to the extent that they might deem sufficient. If this bill is enacted are we not going to subject the highest court in the province to criticism? Heaven knows there is already considerable criticism of our courts and other institutions. I do not think it would be advisable to add one more object of criticism.

Hon. Mr. HAYDEN: It is simply a question whether for the enforcement of the provisions in this bill it is necessary to have the High Court judges try

fraudulent bankrupts for what in many cases would be comparatively mino offences, while magistrates and county court judges have jurisdiction to try wha I regard as being much more serious offences.

Mr. Justice URQUHART: Quite so. As I have said, magistrates and count court judges can sentence a man to jail for life and to be whipped.

Hon. Mr. HAYDEN: A magistrate, with the consent of the accused, can tr him for almost any indictable offence and sentence him to very long terms o imprisonment.

Mr. Justice URQUHART: Yes.

Hon. Mr. ASELTINE: And do it much more speedily.

Mr. Justice URQUHART: Yes.

Hon. Mr. ASELTINE: This proposed system would seem to me to be ver cumbersome and likely to cause a lot of delay.

Mr. Justice URQUHART: Yes. In the city of Toronto, where the courts ar very busy, the proposed change would cause a considerable amount of delay while out in the smaller towns, for instance, Kitchener, seeing that Senator Eule is present—

Hon. Mr. EULER: There are no offences committed there of course.

Mr. Justice URQUHART: Supposing there was a sitting of the Suprem Court on the 15th of January, for the trial of cases, and there was not anothe sitting until June, in the event of an offence being discovered on the 25th o January, the accused could not be placed on trial until June.

Hon. Mr. ASELTINE: That would apply particularly in the western provinces where we have only a few judicial districts and two sittings of the Supreme Cour every year.

Mr. Justice URQUHART: Quite so.

Hon. Mr. HAYDEN: That raises another point. I have not studied this sectio thoroughly, but its effect may be to take away from the accused his right o election under the Code to a speedy trial.

Mr. Justice URQUHART: Yes.

Hon. Mr. LEGER: It seems to me that the judge who has had civil matter before him would be more or less—and I am using these terms mildly—biased o prejudiced in trying these offences.

Mr. Justice URQUHART: There is that danger. Of course, there can always be an appeal against a sentence. The fact that there have not been appeals against sentences indicates that the Crown Attorney is satisfied, or that it is felt there was no purpose to be served in trying to increase the sentence by an appeal to the Court of Appeal.

The CHAIRMAN: I understand that the Supreme Court would be given power to dispose of those offences, but would not be given exclusive power to do so.

Mr. Justice URQUHART: I am not sure about that point. I have read over the bill, and I think the intention was to give us exclusive power, but it is not so expressed. Of course, we have the power under certain circumstances.

Hon. Mr. EULER: We might ask the Legal Officer what was the intention.

Hon. Mr. HAYDEN: What was intended does not matter; it is what was said. Section 159 has this to say, that these courts

> are invested in law and in equity with original, audiliary, ancillary and *plenary* jurisdiction in bankruptcy and in all matters of proceedings authorized by or under this act during their respective terms—

Hon. Mr. LEGER: Those powers of course are new?

Mr. Justice URQUHART: They are new under the Bankruptcy Bill, but we have those powers now.

The CHAIRMAN: I take it that you do not approve of the practice under this law to have a judge of the Supreme Court review these cases?

Mr. Justice URQUHART: Personally I think it is not the proper court.

Hon. Mr. LEGER: The court is not organized for that purpose.

Mr. Justice URQUHART: It is organized to try any criminal cases, but by section 583 of the Code we try only the major criminal cases, which keep us busy enough.

Hon. Mr. EULER: Mr. Chairman, not being a lawyer I hesitate to intervene in this discussion. It seems to me the point you have raised is an important one. These cases may not be referred to as trivial, but they are not as important as others, and in many places such as Kitchener, where there are only two sittings of the High Court a year, if these cases are left to the Supreme Court there would be no means provided for speedy adjudication; whereas if they were tried by the County Judges they could be dealt with almost immediately. It seems to me the matter of delay is an important one.

Mr. Justice URQUHART: I think so.

Hon. Mr. EULER: It should be made clear that it is not the exclusive jurisdiction of your court.

Mr. Justice URQUHART: If it is decided to include section 159 my fear is that the change in practice would give rise to innumerable irresponsible prosecutions. The launching of prosecutions should be closely supervised by the court. Section 206 (2) (3) seems to leave this matter in the hands of the court. It is my belief that in all cases the responsibility for the prosecution of any indictable offence, including these 21 bankruptcy offences, should be the responsibility of the Crown Attorney of the county. Prosecution should not be left in the hands of a trustee's solicitor, who might have an axe to grind. He may, but not in many cases, carry on the prosecution in a way that is suggested as being objectionable by the Court of Appeal in our province in the case of Rex vs. Charmandy, reported in 1934 Ontario Reports at page 208. If the matter is left to the discretion of ordinary solicitors, many men who are inexperienced in quasi criminal matters will be handling these prosecutions.

Under section 206 (4) if the prosecution is under the Criminal Code the Crown Attorney must be consulted and the charge laid by him. The practice in Ontario, and it has worked satisfactorily as far as I am concerned, has been to come before the Bankruptcy Judge in Toronto and place all the facts before him. If in his opinion a proper case is justified on the facts, supported by documents and affidavits, the trustee is authorized to lay a charge on the advice of the Crown Attorney. That is the responsibility of the Crown Attorney, who is the officer appointed by law in our province to handle indictable offences. In that way you have an officer who understands the procedure in these cases, who is impartial and has no axe to grind and who will conduct the prosecution, I have no doubt, to the best of his ability. I was a Crown Attorney many years ago for a period of five years and I handled a number of these cases. I know that they are very difficult. It is sometimes a problem to demonstrate to magistrates and others the guilt of the accused.

May I come again to the question of court sittings in the county towns. In most instances we have only one week in these towns and have enough work to consume all the time allotted before passing on to another town. If additional prosecutions are put upon us it would certainly very seriously interfere with our work. It has been suggested by Senator Euler that the County Judges are located in the towns, they are used to handling indictable offences of this sort

and they can conduct speedy trials. It seems to me that practice should be followed. The fact that creditors are sometimes critical is something I think should not be taken into consideration.

Hon. Mr. LÉGER: The only feature you object to is the provision of Section 159 (*f*)?

Mr. Justice URQUHART: There is another clause in Section 159 (1) (*a*):—

> to hear and determine all matters in dispute arising out of the administration of an estate or in which any interest of the estate is involved or to which the trustee is a party, or in which the trustee is a claimant against any other person.

It quite often happens in bankruptcy matters that either a trustee is proceeding against some private person on behalf of the estate, or some such person is making a claim against the estate. It is often difficult for a judge to determine whether it is a matter of bankruptcy or a case that should be dealt with in the regular courts. The practice has been that where an outsider is involved, the matter shall be brought before the regular courts. There is a decision of the English courts to that effect in the case of Ellis *v.* Silber (1873), Law Reports, 8 Chancery, page 83, in which it is stated at page 86 as follows:—

> That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors, as the parties to the administration in bankruptcy, are subject to that jurisdiction. The trustees or assignees, as the persons entrusted with that administration, are subject to that jurisdiction. The assets which come to their hands and the mode of administering them are subject to that jurisdiction; and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition, that whenever the assignees or trustees in bankruptcy or the trustees under such deeds as these have a demand at law on in equity as against a stranger to the bankruptcy, then that demand is to be prosecuted in the Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige whatever of authority.

That is another phase of the section which I think should be left as it is.

The next subject about which I should like to speak is the proposed decentralization of the Bankruptcy Court. In Ontario we now have one bankruptcy office located in the city of Toronto. There are some receivers appointed under the Bankruptcy Act, but that is the only office of record that we have ever had. I would not like to see the process of decentralization invoked and forty-seven jurisdictions created. We have records for years, and those records will continue to build up. There is one place of record in the province where searches can be made. For instance, a person who is passing a title must search for bankruptcy against the man from whom he is buying. Having only one office also is conducive to uniformity of practice.

Section 160 of the act provides that the Local Registrars, forty-seven in number, shall be Registrars in Bankruptcy, and that the judicial powers of the Registrar are to be exercised by the Master of the court, but if there be no Master at that point, by the registrar if he is a duly qualified lawyer, or otherwise by the county judge. There is now power under the present act to appoint extra registrars in bankruptcy if necessary. I think it is in the public interest that there should be only one office of record for the province. This practice has been in vogue, as I said, since about 1920. If all offices were made offices of record it might require forty-seven searches to determine whether a man is bankrupt or not.

Hon. Mr. ASELTINE: Could that situation not be overcome by a system of double filing as is done in Surrogate matters?

Mr. Justice URQUHART: Yes; the information is reported to Toronto at the present time.

Hon. Mr. ASELTINE: In Surrogate matters one can make a search with the Surrogate Registrar at the provincial capital and can get all the information there no matter where letters of administration were applied for.

Mr. Justice URQUHART: We can do that in Toronto, I think.

Hon. Mr. HAYDEN: Is there enough work for forty-seven different jurisdictions?

Mr. Justice URQUHART: I do not think there would be. The bulk of bankruptcy work is in the city of Toronto, and most of the creditors are there or in the larger centres.

Hon. Mr. ASELTINE: Have you any record of the number of bankruptcies in the province of Ontario last year?

Mr. Justice URQUHART: There were not very many last year, because these are extraordinarily good times: but my recollection is that in 1932, which I suppose was the worst year of the depression, we had about one thousand bankruptcies. I doubt if we had two hundred last year.

The CHAIRMAN: Mr. Reilly is here to give us exact figures a little later.

Mr. Justice URQUHART: Another objection to decentralization is that you might have a petition in bankruptcy filed at two places or perhaps half a dozen places by different creditors on or about the same day, which would make for great confusion.

Hon. Mr. MORAUD: Could the jurisdiction not be the domicile of the debtor? If the debtor's domicile was in Toronto, then the jurisdiction would be in Toronto.

Hon. Mr. LEGER: That is done under the Bill of Sale Act.

Mr. Justice URQUHART: The point is that there is a disadvantage in having several places of registry. In 1932, when we had roughly one thousand bankruptcies in Ontario, it was not considered necessary with all that work to have more than one registrar. Why make a change now when the number of bankruptcies is so small?

Hon. Mr. MORAUD: Should we not consider the rights of debtors? They ought not all be required to go to Toronto or any other one place in the province.

Hon. Mr. HAYDEN: I doubt if this proposed amendment is intended to be in the interest of the debtors.

Hon. Mr. MORAUD: Well, should we not look upon it from the point of view of the interest of all parties concerned?

Hon. Mr. ASELTINE: I understand the creditors are asking for this.

Hon. Mr. HAYDEN: The creditors might be anywhere in the province.

Hon. Mr. MORAUD: If the debtor is in Hamilton and most of the creditors are there also, should they all have to go to Toronto?

Mr. Justice URQUHART: In practice it hardly works out that way. The creditors are pretty widely scattered, as a rule. As a matter of fact, many of them are in Montreal. I am astonished sometimes at the large number of creditors who are from Montreal, though of course that is the chief centre for certain lines of business.

Under the Act the Registrar in Bankruptcy is given wide powers. He can make receiving orders when unopposed, hear all unopposed and ex parte applications, make interim orders, hear appeals in certain cases, and so on. I

think there should be careful supervision of these matters by the court. It is important that expenses of administration should be carefully checked, and that trustees' disbursements and remuneration be approved, and also that solicitors' bills of costs be taxed. The proper place for passing accounts is in the courts, where the records are readily available to everyone.

Perhaps it would answer the question raised by Senator Moraud if I pointed out that under the present Bankruptcy Act a good many steps in the administration of a bankrupt estate can be taken outside of Toronto. By the way, I am not holding any brief here for the city of Toronto. Voluntary assignments in bankrupty are filed with the Official Receiver in the locality of the debtor; and there are 16 Official Receivers in various parts of the province. In the second place, power is given to the Official Receiver in each case when he receives an assignment to direct the disposal of perishable goods, hold meetings of creditors, fix bonds of trustees, and so on. Thirdly, trustees are appointed at the meetings of creditors held in the locality of the debtor, and such trustees immediately proceed to administer the estates. Claims are settled by the trustees and inspectors without application to the Court, except when there is an appeal from their decision. Under section 43 of the act, they can do almost anything within reason, without recourse to the court. Furthermore, trustees can apply personally for their discharge. In a great many estates in which the authorized assignments are made outside Toronto, the only applications to the court at Toronto are for the discharge of the trustee and debtor, and for the taxation of solicitors' bills.

Hon. Mr. Moraud: Do you not think that simplification of the administration of justice is desirable, and that centralization is a wrong principle?

Mr. Justice Urquhart: I would not agree with the latter, with respect. I have an idea that the more uniformity you can get in the practice with regard to a complicated statute like this, the better. Although all the High Court Judges in Ontario have jurisdiction in bankruptcy, we have only one Judge who is assigned specially to bankruptcy work, and we have one Registrar. Mr. Reilley was the Registrar for many years, and since 1934 the Registrar has been Mr. Cook, who is a very competent man. Issues may be tried outside Toronto. Although as a rule I sit exclusively in Toronto in these matters I have on occasions when the convenience of the parties demanded it sat in London and a number of other places to hear important matters. As Bankruptcy Judge, I have power to direct an issue to be tried before any Judge or Officer of the Court in any part of the province. This power has been used in many cases. One that I might cite is *re* Bozanich, 23 C.B.R. 234, which at my direction was tried in County Court at Windsor. An appeal from that court's decision was taken to me, and the case ultimately went to the Supreme Court of Canada. I am sure the Honourable Mr. Martin would remember it very well. More recently there was the case of Paul Croteau, in which I directed that the claims of more than one hundred wage-earners be tried at Hearst, which is not a county town but was their place of abode, before the District Court Judge of the District of Cochrane. Many trials have been held in the locality of the debtor, and I do not see why it is necessary to change the Act.

I come now to my third point. Whereas the Bill aims at decentralization, it would centralize certain powers in the Superintendent of Bankrupty. I have the utmost confidence in the present Superintendent, who has been a friend of mine for many years, but he may not always hold the office.

Section 91 and other sections provide that trustees in bankruptcy shall apply for their discharge to the Superintendent instead of to the Court. It is my submission that the present Act should not be changed in this connection.

Hon. Mr. Hayden: Under the Bill the receiving order would be made by the Court, would it not?

Mr. Justice URQUHART: It would be made by the Registrar, if unopposed, but by the Judge if opposed.

Hon. Mr. HAYDEN: But he is an officer of the Court.

Mr. Justice URQUHART: Yes.

Hon. Mr. HAYDEN: Then the proceedings are conducted in the Bankruptcy Court?

Mr. Justice URQUHART: Yes. They are conducted in the locality of the debtor as a rule.

Hon. Mr. HAYDEN: Why should the court not be the one to discharge the debtor?

Mr. Justice URQUHART: That is my point exactly, Senator. I do not think there should be a change. If I read the Bill rightly, the trustee has no right of appeal if the Superintendent refuses the discharge, unless a creditor has opposed the discharge.

Section 82 provides that the trustee's accounts shall be passed and approved by the Superintendent instead of by the Court. This would have to be done from the remote parts of Canada by correspondence, I assume, because most estates would hardly pay the expense of sending a trustee to Ottawa to justify his accounts. My submission is that the trustee's accounts should be passed by the Court. It always has been the practice for the Court to pass the accounts of trustees, liquidators, receivers, executors and so on.

There are other sections which seem to divest the Court of its jurisdiction. I have referred to these in my memorandum, which I shall leave with the committee. Unless there are some questions, I do not wish to take up any more time, as there are others waiting to be heard.

The CHAIRMAN: I am pleased to know that we may have this memorandum for our own use.

Mr. Justice URQUHART: In the memorandum I have referred to a number of other matters that I thought ought not to be changed. The reference to various sections and points are indexed.

Hon. Mr. EULER: Have you any suggestions to make as to what, if anything, should be added to the Act?

Mr. Justice URQUHART: I am afraid I am a stand-patter on the Act. It has worked very smoothly. I have to thank the former Judges of Ontario and the other provinces for the spade-work that they did when the Act was first passed: their work has made my duties as a Bankruptcy Judge a very pleasant and comparatively easy one.

The CHAIRMAN: Would you not consider it dangerous to change many things in the Act since we have behind us only five years of jurisprudence?

Mr. Justice URQUHART: Yes, that is my point largely. The chief objection I have to any change indeed is to this section 159.

The CHAIRMAN: In your experience would not even a small change give rise to new interpretations of the law?

Mr. Justice URQUHART: Yes.

The chairman has just reminded me of one other matter that I intended to deal with, that is, the discharge of the bankrupt. There is a provision in this Bill for what is called the automatic discharge of the bankrupt. My opinion is, and I have so expressed it in two or three judgments, that the trustee and the bankrupt should be discharged together; that is, the trustee should not have his discharge before the bankrupt has his, and vice versa. I am not in favour of the present proposal to provide for the automatic discharge of the bankrupt.

Hon. Mr. MORAUD: Don't you think it would be unfair in many cases to tie up the trustee with the debtor? Oftentimes the debtor cannot get his discharge right away, it may be years after when the creditors are more inclined towards leniency, yet all this time the trustee would be tied up to the debtor.

Mr. Justice URQUHART: Yes, that is so, but the difficulty of the present practice is this. Your trustee dies or he moves away, or in some cases he has gone into bankruptcy himself—I recall one instance where he went to jail. It is very difficult after a number of years for a debtor to get his discharge. As I recall, there is no provision in the Act for his discharge without the intervention of the trustee. I am afraid I have broken the law occasionally by allowing the bankrupt to make an affidavit himself, for I took the view that necessity makes the law.

Section 146 shifts the onus of making the application for discharge from the debtor to the trustee. This is taken apparently from the American Bankruptcy Act. Two or three years ago I had some correspondence with Mr. Henry Chandler, when he asked me to advise him as to some way in which the practice of automatic discharge could be improved. I am speaking from recollection now, but, as I recall, the procedure in the States was found not to be satisfactory and was to be amended. I understand there is at present before Congress an amended Bankruptcy Bill. If I had had more time I would have been able to run that down, but it can be easily ascertained.

Hon. Mr. HAYDEN: We will do that.

Mr. Justice URQUHART: The American Act is different from ours in that it has no provision for making after-acquired property of the bankrupt available for distribution among his creditors, except that "all property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance, shall vest in the trustee." Under our Act all property which may devolve upon or be acquired by a bankrupt before his discharge becomes the property of the trustee.

Another difference in the bankruptcy law of the two countries is that the American Act does not provide for conditional discharge as we have it under section 143.

Under our procedure the bankrupt makes a special application for his discharge, and this places the responsibility on him of satisfying the court as to his conduct and that he is entitled to his discharge. This has always been the practice under our Act. I am afraid that under section 146 (1) if the bankrupt does not wish to apply for his discharge he will not notify the trustee. While I think the present system has its disadvantages, I consider it is preferable to that which is now proposed.

Hon. Mr. HAYDEN: What do you think of a statutory limitation?

Mr. Justice URQUHART: That would not be feasible because some estates may take years to wind up, others may be distributed very speedily.

Hon. Mr. HAYDEN: You do not need the debtor to complete the winding up. The trustee just takes over the estate.

Mr. Justice URQUHART: Yes. The debtor has to satisfy the court that the bankruptcy was due to circumstances over which he had no control.

Hon. Mr. HAYDEN: That should be done within a year, should it not?

Mr. Justice URQUHART: It might be.

Hon. Mr. HAYDEN: I should like to see the bankruptcy shortened and more concentrated; get the job done without delay.

Mr. Justice URQUHART: That is up to the trustee and the creditors. It is a businessmen's act, and they do their work very efficiently.

Hon. Mr. HAYDEN: I am not taking up the position of the debtor, but he is subject to the second call of the creditors and during that time he cannot do anything else.

Mr. Justice URQUHART: That might be worked out in some way, but at the moment I am not ready to state specifically how it should be done.

The bill proposes another change on which I am not expressing any opinion. At present there are often two bankruptcies and sometimes three, and the debtor has not been discharged from any of them. Then he acquires property worth $2,000 or $3,000, the creditors become aware of it, and seize it. Under our law that is always the property of the first bankruptcy. I believe under the English law they allow subsequent bankruptcies to share parri passu. But in the recent case of re Hord—I do not know whether it is reported yet—I pointed out that under our present system the first bankruptcy is entitled to any after-acquired property, and that anyone who dealt with the bankrupt, who, so to speak, is financially dead, should do so at his own peril.

Are there any other questions, Mr. Chairman?

The CHAIRMAN: I think not. You have rendered an important service to this committee, Judge, and on their behalf I wish to convey to you their thanks for your attendance.

(For memorandum by Mr. Justice Urquhart, see Appendix A).

The CHAIRMAN: Mr. W. J. Reilley, K.C., Superintendent of the Bankruptcy Act Administration of the Department of the Secretary of State, is here to answer a question which was asked the other day as to the number of bankruptcies during the past year.

Mr. REILLEY: Mr. Chairman, in the Ottawa Journal of the 11th instant there appeared a report on the number of bankruptcies in Canada. The number is given as 60.

Hon. Mr. HAYDEN: When?

Mr. REILLEY: 1945. We can use that for what it is worth. My annual report for 1945 shows there were 264 failures, not including liquidations under the Winding Up Act, creditors arrangement compositions, bulk sales or similar proceedings. I just want to place that information before you, to correct the impression which may have been conveyed by the press report.

Hon. Mr. HAYDEN: Bulk sales are not necessarily indications of bankruptcy.

Mr. REILLEY: But in 99 cases out of 100 they are failures. There is the odd case where a man makes a bulk sale. I simply mention that to direct attention to the inaccuracy of this press report—60 failures against my reported 264 failures.

Hon. Mr. ASELTINE: Where did they get the information?

Mr. REILLEY: I do not know. They did not get it from me.

The CHAIRMAN: Gentlemen, we have in attendance Mr. Terence Sheard, Assistant General Manager of the National Trust Company, Toronto, representing the Dominion Mortgage and Investments Association, and Mr. R. B. F. Barr, of the Ontario Bar. I will call on Mr. Sheard.

Mr. SHEARD: Mr. Chairman and honourable senators of the committee, I appear on behalf of the Dominion Mortgage and Investments Association. I imagine that members of the committee know of this association. It is an association of loan, trust and life insurance companies to consider matters of mutual interest. When this bill was introduced the association formed a special committee to consider its provisions from the point of view of investors and trustees for investors. I am the chairman of that committee, and it is in that capacity that I am appearing before you today.

We have prepared a brief, (See Appendix B), which deals with only on aspect of the bill, but an aspect which we consider of great practical importanc Instead of reading the brief, which is always rather a dull process, with you permission I should like to speak to it and draw the attention of the committee t some of its more important aspects.

It is our understanding of the bill that it proposes to bring all corporat reorganizations under the terms of the Bankruptcy Act, and do away with pro cedure under the Companies Creditors Arrangement Act, although this Act i not specifically repealed in terms so far as I can discover.

The association believes that that would be a mistake. It thinks that th interest of investors, while technically they may in some cases be creditors, i really of a different type from that of ordinary creditors. Therefore it is quit appropriate to have two different types of procedure: in England reorganization are of course under the Companies Act, and ordinary compositions under th Bankruptcy Act. It is true that in the United States company reorganization come under the Bankruptcy Act because of the constitutional problem involve but you may remember they are in a special part of the Act passed as a separat bill, and it is usually referred to colloquially as the Chandler Act.

The association recognizes that in the administration of the Companie Creditors Arrangement Act in the past there have been abuses and arrangement have been put through under that Act that probably were not fair to the creditors Therefore the association is putting forward certain proposed amendments, whic it submits for the consideration of the committee, to be made to the Companie Creditors Arrangement Act. We are not putting forward those amendments i any spirit of presumption, for we recognize that they will be carefully scrutinize by this committee and by the law officers of the Crown; but until the thing i actually put down in black and white it is often very difficult to understand jus what is proposed.

I should like to say that these amendments have not been hastily prepare or ill considered. The association went into this matter a good many years ago and in 1943 it asked three very experienced corporation lawyers, Mr. Gilber Stairs of Montreal and Mr. Kaspar Fraser and Mr. R. B. F. Barr—he is her with me today—both of Toronto, to prepare amendments that might be con sidered suitable for the Companies Creditors Arrangement Act. The work wa not gone on with at the time owing to the war, but the amendments presented fo your consideration today are substantially the amendments prepared by counse at that time, reconsidered and gone over by the representatives of the variou companies concerned.

Perhaps it might be useful to the committee for me to recall something o the history of the Companies Creditors Arrangement Act. Prior to the firs war, when all or most of Canada's foreign financing was done in England, th practice in issuing securities was to follow the English precedents, and practically all trust deeds contained clauses permitting a majority of the bondholders in meeting to vary the terms of the contract. Later, when American financin became commoner, in the twenties, those provisions were deleted from a grea many trust deeds because they were not usual in the United States. So when th depression came along it was discovered that a large number of companies had t be reorganized, and that the provisions of the trust deeds were inadequate t permit a reorganization by agreement, and in reality there was no way in whic the companies could be reorganized at all.

It was as a result of that situation that the Companies' Creditors Arrange ment Act was passed. Its provisions were very largely taken from the Britis Companies Act of 1929, and the body of British authorities and precedents o that act have been used in the Companies' Creditors Arrangement Act. Never theless at that time, and since, there was no way in which a company coul make any kind of compromise with its creditors—that is an ordinary tradin

mpany—without going into bankruptcy, except under the terms of the ompanies' Creditors Arrangement Act. Therefore the provisions of that act ere taken advantage of not only by the type of company for which it was ndamentally intended to serve, but by a great many other companies.

Investors, bondholders, debenture holders and shareholders have methods organizing trustees for bondholders and so forth and are in a position to feguard their interests; but the ordinary trade creditor does not have an ganization of that kind, and so I think it is fair to say that in larger cases, e type with which my association is concerned, the act on the whole has worked asonably well. In the case of smaller companies, who were trying to make composition with their creditors, it did not work so well. We should consider hat happens in England, where a company reorganization will come before a ry small group of extremely experienced judges; it is handled by qualified ople and the practice is very closely supervised by the court. Here we have e act administered from one end of the country to the other, and it is inevitable at in some cases applications are brought before judges who are not very perienced in such matters and who do not realize that because the application unopposed it is not necessarily an application that should properly be granted. any rate, there is the feeling that procedure probably should be tightened up, d we are proposing amendments for that purpose, which do not disturb the sic principle on which the act proceeds.

The basic principle of the Companies' Creditors Arrangement Act is reorganition and composition by consent. What the act does is to enable the consent d approval of a certain specified majority to be applied to everybody of the me class. That is necessary, because in the case of bondholders and bearer nds widely scattered one never could possibly locate them all, and therefore ything that approached 100 per cent agreement would be physically impossible. evertheless, the whole procedure is based upon consent, and there is no ggestion of disturbing that principle.

It is proposed to introduce an initial and additional steps in the procedure way of preliminary hearing, and it is provided that representatives of the fferent classes of security holders or creditors shall be given notice of such hearing and will have an opportunity at that time to present to the court, fore any expenses are incurred or meetings called, any objection or comment the company's proposals. We think that will be of considerable practical vantage in all cases, not only in the cases in which abuses have occurred. At e present time, and even in the larger cases, the whole carriage of the proceedgs is in the hands of the company's lawyers; if they make a decision which the final motion to the court for approval turns out to have been unwise cause they have called their meetings on too short notice, or persuaded the urt in respect of some technical flaw, the only thing then to do is commence e proceedings all over again, resulting in great expense and loss of time.

Another point on which abuse and difficulties have occurred was in connection th amendments. Under the present Companies' Creditors Arrangement Act ere is nothing to prevent a plan being amended at a meeting of creditors—and course it is inadvisable to prevent all amendments. The suggestion is that any amendment is to be made at a meeting, which substantially and adversely ects the interests of the creditors, that the chairman must go back to the urts for direction as to how long the period of adjournment should be and at additional notice should be given and so forth. This is what has happened fore: A plan would go out which was quite favourable to the creditors, and y would all send in proxies voting in favour of the plan. When the meeting s called and the men with the proxies were there, amendments would be made ich totally changed the whole basis of the plan, and the votes would be given favour of it; and as this feature was not drawn to the attention of the court

on the final approval the creditors woke up to discover that they were ge something very different from what they thought they would get. It is intended to prevent such a practice.

There have been a good many irregularities in connection with the solicit of proxies. It is considered that some provision should be added tightenin the procedure. May I say that the suggestion of a preliminary hearing also to some extent the provisions with respect to the solicitation of proxie based upon the Bankruptcy Act in the United States. They do not go as far, but we would think that is probably not necessary in our situation.

Hon. Mr. Euler: What suggestion do you make in regard to the solicit of proxies.

Mr. Sheard: May I read from page 6 of the draft bill, section 29.

> It shall not be lawful for any person to solicit or knowingly pe the use of his name to solicit any authorization (which expre shall include any instrument appointing a proxy, consent or c authorization) in connection with any compromise or arrangement u the following information is presented in writing to each soli person at the time of the first solicitation:—
>
> (1) if the solicitation is by or on behalf of the debtor compan statement to that effect; or
>
> (2) if the solicitation is not by or on behalf of the debtor comp the name or names of the persons on whose behalf or at whose inst the authorization is being solicited and particulars of the clas classes and aggregate amount of securities, obligations, claims or sh of, against or in the debtor company which are owned or contr for voting purposes by any such persons; and
>
> (3) if the solicitation is by a person who is entitled to or may rec compensation or reimbursement of expenses for soliciting or rec mending the giving of an authorization, a statement to that effect
>
> 30. No person shall solicit or knowingly permit the use of name to solicit any authorization by means of any statement whic his knowledge was at the time and in the light of the circumsta under which it has made false or misleading in any material particula

Then there is the provision of a penalty in the event of contravention those sections. It is our hope and belief that if amendments along those l were made to the Companies' Creditors Arrangement Act that most, possibly all of the abuses under the act, which have occurred in the past w be eliminated. I may say that we have discussed this matter at some len with other groups, particularly those representing the ordinary unsecured tr creditor, like the Board of Trade of the city of Toronto and others. I th the committee will find that when it examines the briefs which I understand going to be submitted by groups of that kind, that the general recommendati which we are making are in line with their recommendations.

Perhaps I should revert for a moment and describe in a little more de why we feel that it is unwise to attempt to do what this bill purports to namely, to bring all company reorganizations under the Bankruptcy Act. the first place, and as I have said, because the interests of investors are v different from those of ordinary trade creditors, the practical difficulty accomplishment seems to us to be very grave. I know that the Superintend of Bankruptcy has been considering this matter for ten years, and therefore I not think we can say the suggestions he is putting forward are ill-consider At the same time I think it must be admitted that if this bill passed in this fo no large company with securities outstanding in the hands of the public co ever be reorganized. I do not think that is an over-statement.

Hon. Mr. EULER: Mr. Reilley, is shaking his head.

Hon. Mr. HAYDEN: It is a matter of opinion, but I am inclined to agree with you.

Mr. SHEARD: For example, if you will turn to section 104 of the proposed act you will find that the secured creditors before voting at a meeting must value their securities and they are only entitled to vote for the difference between the value of their securities and the amount of their claim. How could you ever apply a section of that kind to a meeting of bondholders? It would be an impossibility. Furthermore, you will find that the act requires that notice of the proposal shall be given to every creditor affected. In the case of bearer bonds, or bearer share warrants, how would it be physically possible to give notice to every bondholder? You could not possibly find out who they were; you would not know them. That is a physical impossibility. There are provisions, for example, requiring a list of shareholders to be sent out to anyone who requests them. In a large company the list of shareholders might run to 10,000 or 12,000 names. The preparation of that list would cost ten cents per name; so that every time that is done you incur an expense of a thousand dollars. The purpose of that is very obscure to me.

There is another reason. When reorganization of a large company finally comes down to the place where action can be taken on it, after long periods of consultation, argument and negotiation between representatives of the different groups, the need for action is urgent. It may be, for example, that new capital and new management are coming into the situation, and they are not willing to sit around indefinitely waiting till somebody makes up his mind whether the terms are fair or not.

Hon. Hr. HAYDEN: Supposing the stage of bankruptcy is reached, then the difficulty of attracting new money into the enterprise would be an important factor, would it not?

Mr. SHEARD: That is quite true. If the matter is one of great urgency, the ability to delay the plan is really in effect the ability to defeat it. Under this scheme I think it would always be possible for the Superintendent of bankruptcy and conceivably the Minister to whom he is resposible to delay any plan by simply ordering a further investigation. As a matter of fact, I think it would be very difficult for the minister to refuse to order an investigation. It is not easy for a minister to get up in the house and explain why he has not investigated something; it is much easier for him to state that he has investigated something and then to justify his conclusion after the investigation has been made. Any minority interest which was trying to delay or defeat the plan would of course immediately request the minister or the Superintendent to make a further investigation, and would put forth all sorts of allegations to support the request, in which circumstances I fear that an investigation would have to be made. If we get to the point where no reorganization of a large company can be made unless the Secretary of State consents or approves, we shall have reached a state of paternalism which goes beyond even the operations of the S. E. C. in the United States. Also, grave complications might arise because the provincial governments often take a great deal of interest in these things. As the members of the committee know, it is really not practicable to reorganize a newsprint company, for example, without getting the approval of the provincial government concerned. I think that was a lesson learned from the Abitibi proceedings. If it is also necessary to get the approval of the Dominion Government, and if the points of view of the two governments conflict, I should think the position of the investors in the company in question would be very unhappy.

We feel, therefore, that these proposals are fundamentally unwise, a that the thing desired, namely, rectification and elimination of certain abuses th have occurred in the past, can be accomplished by relatively simple amendmer to the Companies' Creditors Arrangement Act.

One of the basic principles of the present Bankruptcy Act is the preserv tion of the rights of secured creditors, and we believe that principle should left undisturbed. In our opinion the amendment whereby the rights of secur creditors would be brought for judication under bankruptcy is a dangerous or

The arguments that I have summarized here are set out more fully in t brief.

Hon. Mr. HAYDEN: Take a typical case of a company with at least o bond issue outstanding, with preferred and common shareholders and number of creditors. If you were trying to operate such a company under t proposed new Bankruptcy Act, what would the problems be? Would you ju develop that a bit?

Mr. SHEARD: Well, first of all you would have to appoint a trustee, wh would have to make an investigation. That in itself would probably mea doing a lot of work that had already been done.

Hon. Mr. HAYDEN: Suppose there has been some default on the bond issu Then you are going to have a conflict between the trustee for the bondholde and the trustee in bankruptcy?

Mr. SHEARD: You very well might.

Hon. Mr. HAYDEN: There might be conflict and that is not going to sol anything. This bill was designed to deal with the problems of corpora financing and the difficulties that might arise when a company became insolven

Mr. SHEARD: Quite so. Section 23, for example, gives the court power t appoint a committee, and the committee power to put forward a plan, and th court power to approve it. An amendment of that kind is entirely contrary to th whole principle of compositions with creditors and shareholders, which is tha the compositions should be made by consent and voluntarily. I fancy that tha amendment was prepared with the Abitibi case in mind. There was grea difficulty in getting agreement in that case. But, after all, hard cases make ba law, and I think that in the vast majority of cases agreements can be reache Our feeling is that that section, far from facilitating agreement. will probabl make agreements more difficult. Indeed, I think that if anybody looks at th Part II carefully from the point of view of how it would operate in the reorgani zation of a large company with various classes of creditors, I think he is boun to reach the conclusion that it would be extremely difficult, if not utterly impos sible to operate.

There are one or two other points. I notice that throughout the act ther are minor changes of phraseology, which perhaps are not intended to have muc substantial effect. As the members of the committee realize, that sort of thin is very tricky. There are sections that have been in the Act for a good man years, and there is a long chain of judicial decisions on them, and then som slight changes are made in the wording. Well, the presumption is that it wa intended to change the meaning, so the question arises in each case: To wha extent is the meaning changed, and to what extent are the old decisions goo law? I do not want to weary you with illustrations, but there are two that com to mind. One is in connection with section 26, "Stay of Proceedings." Sub section (2) says:—

> Subject to the provisions of sections one hundred and eleven, to on hundred and eighteen inclusive, of this Act *and the preceding subsection* any secured creditor or person holding security on the property of th *bankrupt* may realize or otherwise deal with his security. . .

ne words "and the preceding subsection" have been added, and, according to e explanatory note, this has been done to broaden the effect of the section. oes that mean that proceedings by a secured creditor can be taken only with e leave of the Court? If that is the intention or the result of the change, I ink it is very questionable.

Another example of something along the same line is section 43 (3):—

> No person shall, as against the trustee, be entitled to withhold possession of the books of account belonging to the *bankrupt or any papers or documents relating to the accounts or to any trade dealings of the bankrupt* or to set up any lien thereon.

ould that give a trustee in bankruptcy the right to demand books that were the possession of a receiver or manager? Presumably under the old section, the books of account were covered by security they did not belong to the nkrupt, but he had only an equity of redemption in them, and the receiver d rights of possession against anybody. Well, with the addition of the under- ied words, although the bankrupt might not own the books, the trustee perhaps ould be entitled to them. I refer to this just to show the kind of question that ght easily arise when minor amendments of this kind are made.

Hon. Mr. LEGER: The explanatory note says that the change has been made order that what was formerly Rule 167 should be a matter of substantive law ther than of procedure. So there would appear to be no change.

Mr. SHEARD: Is there no change, Senator, when you take something out of a le and put it in a substantive provision of the Act?

Hon. Mr. LEGER: If the rules have the effect of law there is no change.

Hon. Mr. HAYDEN: A rule could not ordinarily have any greater effect than e statute under which the rule purported to be made.

Hon. Mr. LEGER: That is right.

Mr. SHEARD: The explanatory note also says that the added words have been ken from section 99 (3) of the Australian Act.

Hon. Mr. HAYDEN: It looks as if this might provide an opportunity r conflict between the receiver or manager and the trustee?

Mr. SHEARD: I would be apprehensive of that, certainly.

Mr. Chairman, I expect to be in Ottawa next Wednesday, which I under- and is the next sitting of the committee. If at that time any member of the mmittee desires to ask any questions about the proposed amendments to the mpanies' Creditors Arrangement Act, I shall be very glad to be present.

Hon. Mr. HAYDEN: I think that is an excellent idea.

The CHAIRMAN: We will no doubt take advantage of your offer.

Hon. Mr. HAYDEN: Have you given any thought to the conflict of juris- ctions? The provinces have jurisdiction in property and civil rights, so I ppose a deed of trust, which is a contract, would primarily be a matter within ovincial jurisdiction.

Mr. SHEARD: Frankly, those provisions of Part II as applied to provincial mpanies that are not bankrupt seem to me of very doubtful validity indeed. have not read recently the cases on the Winding Up Act. As you know, ere are a great many of them and they are not all easy to reconcile. We do ow, though, that Companies' Creditors Arrangement Act was referred to the preme Court of Canada, where its constitutional validity was upheld, so at is settled. I should think it is fairly safe to assume that whether all the ovisions of this new bill are ultimately held to be intra vires of the Dominion rliament or not, they certainly would be called into question and protracted igation would almost certainly ensue.

Hon. Mr. HAYDEN: A lot of refinancing has been done in the last few yea on the basis of the existing law.

Mr. SHEARD: Take this example. A perfectly solvent company, with bond issue maturing in a year or two, does not want to call them and pay the off or float a new issue, but wants to extend the existing issue. Assuming it t be a provincial company, it is very difficult for me to see how the Dominio Parliament can get jurisdiction to legislate with respect to a transaction of tha kind. Yet certainly the provisions of this bill contemplate such jurisdictio because section 11 says:

> (1) Any person may either before or after bankruptcy make proposal to his creditors, or to any class of them for
>
> (*b*) an extension of time for payment thereof.

Hon. Mr. LEGER: I would presume that that would apply only to insolven companies.

Mr. SHEARD: Quite so. I think it is to be limited in that way, but it is nc so limited in terms.

Hon. Mr. HAYDEN: The point is that it might lead to litigation.

Mr. SHEARD: I think it would be almost certain to do that. Anothe example is section 22. That section is of course in the present act, but presum ably the present act only makes composition possible where the company i bankrupt. Now the proposal is to make them possible where the company i not bankrupt. I do not see how that section could possibly apply to a provincia company that was not insolvent.

Hon. Mr. LEGER: Could it apply even to a dominion company that wa not insolvent?

Mr. SHEARD: Parliament can legislate with respect to dominion companies

Hon. Mr. LEGER: But not with regard to property and civil rights.

Hon. Mr. HAYDEN: There appear to be some serious problems in thi part to be considered.

The CHAIRMAN: I understand Mr. Sheard has not followed his brief ver closely, and that he would like to have the brief included in the proceedings

Mr. SHEARD: Yes, Mr. Chairman.

The CHAIRMAN: Would Mr. Barr care to add anything to what has bee said?

Mr. BARR: No, Mr. Chairman, I have nothing to add to what Mr. Shear has said. If there are any questions to be asked next Wednesday, after th brief has been read, I would be glad to come back and endeavour to answe them.

The CHAIRMAN: If you wish to come, we shall be pleased to have you.

Hon. Mr. HAYDEN: I should think that it might be left to Mr. Shear and Mr. Barr to arrange which of them will be here next Wednesday.

Mr. SHEARD: We will try to arrange to have someone available that day.

(For Brief of the Dominion Mortgage and Investments Association, se Appendix B.)

The committee adjourned until Wednesday, June 26, at 10.30 a.m.

APPENDIX A

MEMORANDUM PRESENTED BY THE HONOURABLE MR. JUSTICE GEORGE A. URQUHART, OF THE SUPREME COURT OF ONTARIO

CONTENTS

In view of the fact that the proposed Act introduces radical changes which vest the Court of jurisdiction in many important matters and adds new matters to its jurisdiction; that it centralizes many matters in other hands, and proposes to decentralize the functioning of the Court, may I, as Bankruptcy Judge of the High Court of Justice of Ontario, submit the following observations on some of the sections, where changes are proposed and which affect the administration of the Act by the Courts.

Speaking generally, the present Act which is based largely on the English Act has been found satisfactory in most respects. In this Bill many sections of the Act have been rearranged and the wording changed.

The Courts have construed the sections of the present Act during the course of many years, and the law has been settled and clarified. If the wording of the sections of the Act is changed unnecessarily, much of the established Juris-

prudence and case law of Canada, and also of England in so far as it affe Bankruptcy law in Canada, would become obsolete, and this would proba lead to fresh litigation.

Powers are Taken Away from the Courts and Vested in the Superintende of Bankruptcy

One of the most radical changes in the new Act is the substitution of t Superintendent of Bankruptcy for the Court in so many cases, with no right appeal to the court except in the one case of a creditor opposing the truste discharge.

Section 91. This section provides that trustees in bankruptcy shall app for their discharge to the Superintendent of Bankruptcy instead of to the Cou These applications should be made to the Court, where all interested part may be heard and the matter thoroughly considered on proper evidence, wi the usual right of appeal. Otherwise, there is no assurance that correct decisio will be arrived at. Such matters cannot be properly dealt with by correspondenc This section gives the trustee no right of appeal if the Superintendent refus the discharge, unless a creditor has opposed the discharge.

The same objections also apply to the following sections which substitu the Superintendent for the Court:—

Section 82. Provides that the trustee's accounts shall be passed a approved by the Superintendent instead of by the Court. The trustee's accoun should be passed by the Court. It has always been the practice for the Cou to pass the accounts of trustees, liquidators, receivers, executors, admini trators, committees in lunacy, etc.

Sections 90 (6) and 41 (3) provide for the remuneration of the trust being fixed in certain cases by the Superintendent instead of by the Cour without the usual right of appeal.

Section 39 (7) provides:—

> The Superintendent may give such instructions to trustees regardi the estates under their administration *as may be deemed necessary* o *expedient.*

Any application for directions should be made to the Court where all inte ested parties may be heard and the matter thoroughly considered on prope evidence, with the usual right of appeal. Such matters cannot be properly dea with by correspondence.

Section 39 (8) provides:—

> The Superintendent may intervene in any matter or proceeding i Court *as he may deem expedient* as though he were a party thereto.

Intervention by the Superintendent should only be by leave of the Court Otherwise, proceedings might be unduly prolonged and unnecessary costs incurred.

Section 39 (6) provides:—

> —and the administration of any estates to which a trustee has not bee appointed under the provisions of this section may be administered b the Superintendent in such manner *as he may deem expedient* for whic purpose he shall have all the rights and powers of a trustee under this Act

Section 39 (9) provides:—

> The Superintendent may take over and complete the administratio of all uncompleted estates in such manner *as he may deem expedient.*

These sub-sections contain no provision for title to property of the debto vesting in the Superintendent, who would not be able to sell or convey the same. There is also no provision for the Superintendent accounting either to the creditors or to the Court for such uncompleted estates.

"As he may deem expedient". Such unlimited power should not be given one person, but should remain in the Court.

The same objections apply to Section 39 (10):—

—the Superintendent according as the circumstances warrant may cause such funds to be distributed or paid to the persons entitled thereto according to their respective legal rights *in such manner as he may deem proper.*

The distribution of the funds of all bankrupt estates should be subject the supervision of the Court, as in the case of trustees, executors, etc.

Under section 108 (8 and 9) where the consent of the inspectors cannot be btained, power is given to the Superintendent or the Court to exercise the owers of the inspectors. The inspectors as representing the creditors are given ery wide powers under section 47 (1) involving the claims of creditors, the sposal of very valuable assets, etc. If the consent of the inspectors cannot be btained, such matters should be dealt with only by the Court, where all interted parties may be heard and the matter thoroughly considered on proper idence, with the usual right of appeal.

The comment opposite section 91 of the present Bill is as follows:—

No *material* change, *except to substitute the Superintendent for the Court.*

This sums up the general effect of these sections of the new Act.

In his note opposite section 160, the Superintendent states:—

The purpose of this section is to decentralize the courts—.

The effect of this new Act is to centralize the greater part of the administration of bankrupt estates throughout Canada in the Superintendent of Bankptcy at Ottawa.

Decentralization of Bankruptcy Court

Another radical change introduced by the new Act is the splitting up of the ankruptcy Court in Ontario into 47 different courts, with all the resulting nfusion.

Since the passing of the first Bankruptcy Act in 1919, there has been only ne office of Registrar in Bankruptcy for Ontario. This has proved satisfactory, nd provides for one office of record for bankruptcy, where the records of every nkruptcy throughout Ontario are readily available. It also maintains unirmity of practice.

Section 160 of the new Act provides that the Local Registrars of the Supreme ourt, 47 in number, shall be Registrars in Bankruptcy. The judicial powers the Registrar shall be exercised by the Master of the Court, but where there no Master, by the Registrar if he is a duly qualified member of the legal ofession; otherwise, by a Judge of the County or District Court within the dicial district.

There is no power in the present Bankruptcy Act to appoint additional egistrars in Bankruptcy if necessary.

Advantages of the Administration Under the Present Act

Uniformity of Practice

It has always been the practice for one judge to hear all bankruptcy atters. Under the new Act all Supreme Court judges would be required to sit bankruptcy. In the case of opposed petitions and other urgent matters, in ost places no judge would be available to hear such applications except at the gular sittings. As bankruptcy is a special branch of the law in Canada, it is portant that the practice should be uniform and the decisions consistent.

Advantage of having only one Office of Record

It is in the public interest that there should be one office of record for the hole province, as at present, where records of every bankruptcy in Ontario

since The Bankruptcy Act came into effect in 1920 are available. The only complete records of all such bankruptcies in Ontario are in the office of the Registrar in Bankruptcy at Toronto.

In the offices of the Local Registrars of the Supreme Court are made offices of record for bankruptcy, it will be necessary to search in all such offices, about 47 in number, to find out whether a person is bankrupt. (Apart from searching in *The Canada Gazette*.)

Petitions against the same debtor might be filed in several offices throughout the province contemporaneously, which would lead to confusion.

Even after the discharge of the trustee and the debtor, the public are continually searching the records of the court, sometimes for years back, particularly where questions of title to property are involved.

Bankruptcy business is not heavy at the present time. Although there were approximately 1,000 bankruptcies in 1932, it was not considered necessary to appoint additional Registrars then.

3. *Powers of Registrar in Bankruptcy*

The Registrar in Bankruptcy is given wide powers under the Act—to make receiving orders when unopposed, to hear all unopposed and ex parte applications, to make interim orders, to hear appeals in certain cases, etc. The jurisdiction of the Registrar has not yet been clearly defined, and must be carefully exercised.

There is already power vested in the Chief Justice of the Province to assign Registrars in Bankruptcy, and prescribe or limit the territorial jurisdiction of any such Registrar under section 157.

4. *Necessity for Careful Supervision by the Court*

It is important that expenses of administration should be carefully checked and that trustees' disbursements and remuneration be approved, and solicitors bills be taxed.

The proper place for passing accounts is in the Courts, where the records are readily available to everyone, creditors, debtors, trustees etc., and where they may attend on the passing of the accounts, with the usual rights of appeal. This has always been the practice of the court, as in the case of accounts of trustees, liquidators, receivers, executors, committees, etc.

5. *Matters Dealt With Outside Toronto*

Under the present Bankruptcy Act, the following steps in the administration of a bankrupt estate take place without the necessity of an application to the court at Toronto:—

(*a*) Voluntary assignments in bankruptcy are filed with the Official Receiver in the locality of the debtor, and there are 16 Official Receivers in the various parts of the province.

(*b*) Power is given to the Official Receivers to direct disposal of perishable goods, hold meetings of creditors, fix bonds of trustees, etc.

(*c*) Trustees are appointed at the meetings of creditors held in the locality of the debtor, and such trustees immediately proceed to administer the estates. Claims are settled by the trustees and inspectors without application to the court, except when there is an appeal from their decision.

(*d*) Trustees can apply personally for their discharge. In a great many estates in which the authorized assignments are made outside Toronto, the only applications made to the court at Toronto are for discharge of trustee and debtor, and for the taxation of solictiors' bills.

Issues may be Tried Outside Toronto

For the convenience of parties outside Toronto, the judge may direct an ue or a reference before any judge or officer of the court in any part of the ovince under section 171. This section has been resorted to in many cases, . re Bozanich, 23 C.B.R. 234, and more recently in the case of Paul Croteau, ere the contest of the claims of over 100 wage-earners was referred to the strict Court Judge at Cochrane.

Trustees have very wide Powers under Section 43

In the administration of bankrupt estates, the trustee with the consent writing of the inspectors can perform many acts in the locality of the debtor thout recourse to the courts. Some of these are selling, mortgaging or leasing property at will, carrying on business, bringing or defending actions concerning e debtor's property, compromising debts freely, making general compromises, d dividing assets in specie as well as the ordinary division.

Trade Creditors

As trade creditors are usually manufacturers and producers, they are located all parts of the province, and often outside the province, and Toronto is a re convenient centre for applications to the Court.

With regard to the decentralization of the Courts, the Superintendent says his memorandum on page 15 of the Minutes of Evidence before the Senate May 22, 1946, that The Bankruptcy Act "should be dealt with in the same y" as the Winding Up Act.

The Bankruptcy Act is different from the Winding Up Act, in that the ministration under The Bankruptcy Act is by the creditors acting through e trustee and inspectors who can complete the administration to a large extent thout coming to the Court. Under the Winding Up Act the administration is tirely subject to the direction and supervision of the Court, either directly a Judge exercising the jurisdiction of the Court, or by an Officer of the Court whom the matter is referred or directed, and this Officer is a Judicial Officer. othing is implemented under the Winding Up Act without the intervention the Court.

Discharge of Bankrupts (section 146 et seq.)

Section 146 dealing with the discharge of the bankrupt would prove most satisfactory. It shifts the onus of making the application for discharge om the debtor to the trustee. This section is apparently an attempt to provide n automatic procedure" for the discharge of the bankrupt. The Superinten- nt in his note to the section states that this procedure has been taken from e American Bankruptcy Act, and reference is made to section 14 of the nendment to the Bankruptcy Act of the United States as approved on the nd of June, 1939. In 1943 I was consulted as Bankruptcy Judge by American thorities in Washington as to the Canadian procedure on discharges of nkrupts, and I understood that the American procedure was not satisfactory id was to be amended. I understand that a Bill to amend the American nkruptcy Act is now before Congress.

The provision in the American Act for "an automatic procedure" for dis- arge of bankrupt is not so serious in its consequences as such a procedure ould be in Canada, as, unlike the Canadian Act, the American Act has no ovision for making the after-acquired property of the bankrupt available for stribution among his creditors, except that "all property which vests in the nkrupt within six months after bankruptcy by bequest, devise, or inheritance, all vest in the trustee." See section 23 (*a*) of the present Canadian Act,

retained as section 25 (*a*) in the New Act, for the definition of "property the debtor" which includes:—

> all property which may be acquired by or devolve on him before h discharge.

Also, the American Act does not provide for conditional discharges bankrupts.

The present procedure is to be preferred. The bankrupt makes a speci application for his discharge, and this places the responsibility on the banl rupt of satisfying the court as to his conduct and that he is entitled to his di charge. This has been the practice under the Canadian Act since it was fir passed in 1919 and it has always proved satisfactory. It is based on th practice under the English Act, which has been found satisfactory throug many years of experience.

The onus of applying for the discharge of the bankrupt should not be pu on the trustee, as *section 146 (2)* provides. In many cases debtors not intendir to apply immediately for their discharge might neglect to notify the truste under *section 146 (1)* that they do not wish to apply for their discharge, y the trustee is required to proceed with the application under this sectio Apparently the costs of such an application would have to be paid out of th estate at the expense of the creditors, or personally by the trustee until he wa reimbursed by the debtor under *section 158 (5)*.

Section 146 (2) provides that the trustee shall apply to the court for a appointment for the discharge of the bankrupt *not later than six months followin the bankruptcy*. In many cases the administration of the estate would not hav progressed to the point where it would be possible for the trustee to make th prescribed report to the Court showing the realization of the estate, and tha the affairs of the debtor have been fully investigated, and it would be necessar for the trustee to oppose the application on these grounds.

The wording of the first 2 lines of section 146 (1) is defective.

In section 146 (4) the notices should be restricted to creditors who hav proved their claims. Creditors who have not proved have no status in th bankruptcy under well recognized decisions.

Section 147 does not provide for a report on bankruptcy offences.

Section 147 (3 and 4) provides for reports to the Court by the truste and the Superintendent. *Sub-section 9* makes these reports prima facie evidenc of the statements contained in them. Sub-section 11 provides that the bankrup may dispose any statement contained in the trustee's report, and the truste may be required to attend in person and give evidence. There is no provisio whatever permitting the bankrupt to dispute the Superintendent's report. Eve if this right were given, it would not be practical for the Superintendent t appear in person in courts throughout Canada to give evidence in explanatio of his report and be cross-examined on the same, which is a right to whic every debtor is entitled under the law.

Jurisdiction of the Court

Section 159 (1) (*a*) provides that the court shall have power and jurisdictio to hear and determine all matters in dispute arising out of the administra- tion of an estate or in which any interest of the estate is involved or t which the trustee is a party, or in which the trustee is a claimant against any other person.

See the explanatory note to this section:—

> The object of the supplementary jurisdiction herein conferred is t have all matters or disputes disposed of by the court exercising bankruptcy jurisdiction. Heretofore the trustees might be obliged to take proceedings in other courts and he might also be proceeded against in other courts.

Under this section, the bankruptcy court would be required to try and termine matters which involve strangers to the bankruptcy, and which are not oper matters to be dealt with by the Bankruptcy Court. For example, iere the trustee is suing to recover book debts, or other property belonging to e debtor; and where the trustee is being sued for goods supplied during his ministration of the estate. These are matters which should be determined by e ordinary courts, some of them by courts of inferior jurisdiction. From the rding of the section it would appear that even matters ordinarily brought the Division Courts must be brought in the Bankruptcy Court with the reased scale of costs, thus not keeping costs under better control as stated the explanatory note.

The present practice was settled by the decision In re Reynolds, Ex parte istle, 10 C.B.R. 127, in which it was stated by Fisher, J. at page 131:—

> I think it is quite clear on the material filed by the trustee that Thistle is a stranger to the estate that is now being administered in bankruptcy and that there is no jurisdiction to bring him in and compel him to submit his rights, whatever they may be, to be determined by the Bankruptcy Court.

This decision was affirmed by the Court of Appeal, and follows the leading glish case of Ellis v. Silber, (1873) L.R. 8 Ch. 83, in which it was stated at ge 86:—

> That which is to be done in bankruptcy is the administration in bankruptcy. The debtor and the creditors, as the parties to the administration in bankruptcy, are subject to that jurisdiction. The trustees or assignees, as the persons entrusted with that administration, are subject to that jurisdiction. The assets which come to their hands and the mode of administering them are subject to that jurisdiction; and there may be, and I believe are, some special classes of transactions which, under special clauses of the Acts of Parliament, may be specially dealt with as regards third parties. But the general proposition, that whenever the assignees or trustees in bankruptcy or the trustees under such deeds as these have a demand at law or in equity as against a stranger to the bankruptcy, then that that demand is to be prosecuted in the Court of Bankruptcy, appears to me to be a proposition entirely without the warrant of anything in the Acts of Parliament, and wholly unsupported by any trace or vestige whatever of authority.

Under section 159 (1) (*e*), in order to bring any proceeding involving a nkrupt estate in any other court, it would be necessary in all cases to obtain e leave of the Bankruptcy Court.

Procedure With Regard to Bankruptcy Offences

I have discussed some features of the new Section 159 (1). There is, wever, one sub-section to which I particularly take objection as Bankruptcy dge. That is sub-section (1) (*f*) which gives the Court power and jurisdiction to arraign, admit to bail, try and punish offenders for offences committed under this Act.

Section 159 (1) provides that in the Province of Ontario the High Court Justice Division of the Supreme Court of the Province is invested in law d in equity with original, auxiliary, ancillary and plenary jurisdiction in nkruptcy and in all matters or proceedings authorized by or under the Act ring their respective terms as they are now or may be hereafter held and in

vacation and in chambers and supplementary thereto shall have power an jurisdiction to arraign, admit to bail, try and punish offenders for offence committed under this Act.

Under the provisions of section 160 (1) the jurisdiction vested in the Hig Court of Justice shall be exercised in the same manner as the jurisdiction o the Court as exercised ordinarily within the judicial districts established by th Province of Ontario or otherwise for the administration of civil law.

Section 161 provides that the Chief Justice of the Court may nominate c assign one or more of the Judges of the Court ordinarily to exercise the judicia powers and jurisdiction conferred by the Act which may be exercised by single Judge, provided that nothing in this section shall diminish or affect th powers of jurisdiction of the Court or of any of the Judges thereof not specially nominated or assigned.

Section 200 provides that any bankrupt shall in each of the cases set out b guilty of an indictable offence and liable to a fine not exceeding $1,000 or to term not exceeding two years' imprisonment who commits any one of twenty one named offences.

The notes to *Section 159* state that the object of the supplementary juris diction conferred under *Section 159* is to have *all matters or disputes disposed o by the Court exercising bankruptcy jurisdiction.* In reference to *Section 15. (f)* the note says:—

> The most unsatisfactory phase of bankruptcy administration relate to the punishment for offences enumerated in the Act. Experience indi cates that in so many cases magistrates and judges of inferior courts d not fully appreciate the significance of the offences as related to com mercial morality with the result that creditors at large are almos thoroughly discouraged *by reason of the failure to obtain proper an sufficient penalties for offences committed.*

The note goes on to say:—

> If offenders were brought before a Judge more familiar with th relative importance of such offences, punishment meted out would b more consistent and more nearly related to the nature of the offence.

It is further explained in the note that exception may be taken that offender would hereby be deprived of their rights under the ordinary criminal procedure but that it need only be remembered that this authority is not being exercise by some extraneous or incompetent authority but by a Judge of the highest tria Court in any Province through whom it is to be assumed justice will be bes administered.

The proposed legislation is not only objectionable in form, but in practic it would be most difficult to work out even if it were in form to carry out th suggestion in the explanatory note. I deal with the form of the legislation first.

Section 200 creates 21 indictable offences. The procedure in respect to th trial of indictable offences is set out in the Criminal Code. The Supreme Court of Ontario has now jurisdiction to try all indictable offences and unless the legis lation explicitly takes from the Supreme Court of Ontario that jurisdiction, it would continue to have such jurisdiction.

Under Part 9 of the Criminal Code, a Court of General Sessions of the Peace in Ontario has power to try all indictable offences except those mentioned in Section 583 of the Criminal Code which include offences such as treason, murder manslaughter, rape, corruption of public officers, criminal libel, combinations in restraint of trade, etc. Except for special statutory provision, all indictable offences are tried by a jury. Under Part 18 of the Criminal Code the accused has a right to elect to be tried before the County Judge's Criminal Court for any offence triable before the Court of General Sessions of the Peace, and upon such election the County Judge is required to try him without a jury. Under Part

16 of the Criminal Code, the accused has likewise a right to elect to be tried before a Police Magistrate when charged with any offence triable before the General Sessions of the Peace. In such case the Police Magistrate may accept the election or commit the accused for trial.

Where an accused person is charged with an indictable offence there are only two methods of getting him before the Courts—(*a*) to proceed by way of information before a Magistrate or Justice of the Peace and obtain a warrant or a summons; (*b*) to prefer an indictment before the Grand Jury and apply for a bench wararnt.

In the light of the defined criminal procedure in Canada, let us now look at the provisions of the proposed Bankruptcy Act.

Section 159 (*1*) (*f*) gives to the High Court of Justice of Ontario during the terms of sitting and in vacation and in Chambers power and jurisdiction to arraign, admit to bail, try, and punish offenders for offences committed under this Act. Is it intended that a Judge shall have power to try an offender without a jury against his will? The Act does not say so, nor does it say that all rights to trial by jury are to be taken away although that is the suggestion in the explanatory note. However, *section 160* says that the jurisdiction vested in the Court shall be exercised in the same manner as the jurisdiction of the Court is exercised in the administration of civil law. This brings one to a dead end. How can jurisdiction to try and punish offenders be exercised in the same manner as jurisdiction to administer the civil law? There is only one offence in the Criminal Code in which it is provided that a Supreme Court Judge has jurisdiction to try an offender without a jury, and that is under the provisions of section 598 of the Criminal Code dealing with trade conspiracies. If it is intended to deprive the offender of all rights to trial by jury, I would think it would be necessary to explicitly say so in the legislation.

Section 161 provides that the Chief Justice may nominate or assign one of the Judges of the Court ordinarily to exercise the Judicial powers and jurisdiction conferred by the Act which may be exercised by a single Judge. It is difficult to consider this section as related to the trial and punishment of offenders. If a Judge in Bankruptcy is assigned, is it contemplated that he shall try and punish all offenders throughout Ontario?

Now may I deal with some of the practical difficulties.

If the legislation should be so framed as to confer on Supreme Court Judges the exclusive right to arraign, admit to bail, try, and punish offenders for the offences committed under the Act, it is undoubtedly going to create great confusion in the administration of justice in Ontario. The sittings of the Supreme Court are held at certain specified times throughout Ontario. Except in those cases where the accused person is in custody, only those cases coming within the compulsory jurisdiction of the Supreme Court are tried before a Supreme Court Judge, except in some unusual cases. It is submitted that it would unduly burden the trial Courts if Supreme Court Judges are to be required to try all the offences enumerated in Section 200 of the proposed Act, none of which carries a punishment of more than two years' imprisonment. The inconsistency of this legislation is quite apparent. The County Court Judges and Magistrates now have jurisdiction to try accused persons for offences for which they may be sentenced to jail for life and to be whipped. Surely judicial officers who have such jurisdiction are competent to try bankruptcy offences. If however, serious offences occur that it is thought in the public interest should be tried in the Supreme Court, it is always open to the Attorney-General to lay an indictment in the Supreme Court and have them tried before a Supreme Court Judge and a jury.

It is submitted that the reasons for attempting to confer this special jurisdiction on the Supreme Court Judge are not sound. In the first place, it is stated that there has been a failure to obtain proper and sufficient penalties

for offences committed. There is always a right of appeal vested in the Crown in criminal cases upon obtaining leave of a Judge of the Court of Appeal to appeal against the insufficiency of the sentence. If in the past the Crown has not appealed or has appealed and the appeal has been dismissed, it may be assumed that the contention advanced in the note in support of this drastic legislation is not well founded. It is also suggested that if the offenders were brought before a Judge more familiar with the relative importance of such offences, punishment meted out would be more consistent and more nearly related to the nature of the offence. I would suggest that if proper relief cannot be got from the Court of Appeal in an appeal against sentence, there is no assurance that Supreme Court Judges would give sentences more satisfactory to the creditors of the accused.

In answer to the exception that offenders would be deprived of their rights under ordinary criminal procedure, it is stated that it is to be remembered that the authority is not to be exercised by some extraneous or incompetent authority, but by a Judge of the highest Trial Court. Such a statement might be made in justification of taking away all an accused's rights to trial by jury for any offence whatsoever. While it is purely a matter for legislative consideration, and not for judicial consideration, it is respectfully pointed out that such a step would be new in the administration of the criminal law, as there is no precedent for depriving an accused person charged with an indictable offence of his right to a trial by jury, except on his own election.

May I refer briefly to two or three other sections of this Bill.

Section 92 (1). Any equities of redemption in real property should not automatically vest in the mortgagees. It frequently happens that real estate which would be difficult to sell at the time of the bankruptcy increases in value and later becomes saleable. The mortgagees should be left to their usual remedies.

Section 92 (2). This is highly objectionable. No assets of the debtor should be revested in him until his creditors are paid in full, except under the composition sections of the Act and with the approval of the Court.

Section 92 (3). All documents of title, etc., should be held by the trustee, subject to the rules and the direction of the Court.

Section 92 (5). Any directions as contemplated by this sub-section should be given by the Court.

In my opinion, the whole of section 92, except sub-section 4, is highly objectionable.

Section 53 (1) (line 41) provides:—

> ...the trustee may waive the filing of a proof of claim if fully satisfied that a claimant is legally entitled to recover possession of any such property or of any right or interest therein.

In all cases, creditors or persons claiming goods in the possession of the bankrupt should file a proof of claim verified by affidavit.

Section 110 (2) and note to same. Notwithstanding section 125, all proofs of claim should be verified by affidavit, following the regular practice of the Court, by which evidence is required to be under oath, and evidence upon a motion may be given by affidavit. The proof of claim as filed by the creditor is used in determining his claim against the estate. Proceedings under the Income War Tax Act and the Succession Duty Act are not Court proceedings in the same way as bankruptcy proceedings are.

Section 196. This provides for summary administration of estates by the Official Receiver where there are no assets, or insufficient assets to cover the

osts of administration. The Official Receiver must carry out the duties under his section in all such estates. These duties would involve considerable disursements. There appears to be no adequate provisions in section 198 for roviding funds for such purposes.

Section 9 (3) provides that in the case of an assignment by a corporation, he sworn statement of affairs which must accompany the assignment shall nclude (line 30):—

> a list of the shareholders showing the number of shares of stock subscribed for by each shareholder and the amount of capital paid up by each such shareholder.

In some cases this information would be very difficult to obtain, which ould unduly delay the filing of the assignment, sometimes with serious conequences.

APPENDIX B

RIEF PRESENTED TO THE SENATE COMMITTEE ON BANKING AND COMMERCE RESPECTING BILL A5 "AN ACT RESPECTING BANKRUPTCY" ON BEHALF OF THE DOMINION MORTGAGE AND INVESTMENTS ASSOCIATION.

June 20, 1946.

Ir. Chairman and Honourable Senators:

The Dominion Mortgage and Investments Association is an organization mposed of loan companies, trust companies and life insurance companies to iscuss and deal with matters of common interest to those groups of companies i regard to their investments. While it does not include all such companies, its iembership represents the major portion of the business in Canada. The members of the Association are large investors in the securities of corporations and as ich are very much interested in the provisions of Bill A5, respecting bankruptcy, nd generally in the reorganization of corporations in financial difficulties.

The purpose of Part II of the Bill appears to be to bring under this part of ie Bankruptcy Act all corporate reorganizations or arrangements between a ompany and its creditors. In particular the intention seems to be to abrogate ie provisions of The Companies' Creditors Arrangement Act, although this Act ; not specifically repealed.

The Association believes than any such attempt is unsound in principle and robably unworkable in practice. The position of investors in a corporation, hether as bondholders, debenture holders or the holders of preferred or common hares, is very different from that of ordinary trade creditors. A procedure quite ppropriate for adjusting the rights of investors may therefore be quite inappro- riate as a method of dealing with the claims of trade creditors and vice versa. eorganization is really the converse of bankruptcy and it is quite natural for hem to be dealt with in different statutes. In Great Britain company reorgani- ations are dealt with under The Companies Act and not under the Bankruptcy ct.

The Companies' Creditors Arrangement Act was passed to facilitate corpor- te reorganizations and, broadly speaking, imported into the law of Canada the elevant provisions of the British Companies Act. The principle of these Acts is eorganization by consent of the various classes of security holders affected and he purpose is carried out by permitting meetings to be held after which the ishes of a specified majority can be given effect to where it is impracticable to btain the unanimous consent of all the members of a class. Under these rovisions a great many important companies have been satisfactorily reorgan- zed both here and in the United Kingdom.

From the point of view of investors the procedure under The Companies' reditors Arrangement Act has worked well on the whole and has given general atisfaction. The investing public has a variety of instruments to protect its nterest such as trustees for bondholders, large institutional investors, under- vriters, etc., and the intervention of these groups has probably served to prevent ny serious abuse. Nevertheless it is recognized that abuses did occur in the past nder The Companies' Creditors Arrangement Act procedure in the compromise f the rights of ordinary trade creditors where there was no general public invest- nent interest.

The Association believes therefore that—

1. The Companies' Creditors Arrangement Act should be retained in full orce and effect but with such amendments as may be necessary to prevent the

kind of abuses that occurred in the past and to ensure that so far as small trading companies are concerned recourse will be had to The Bankruptcy Act for the purpose of effecting compositions.

2. The Bankruptcy Act should be amended so that its composition provisions will be made available in pre-bankruptcy situations and to permit the compromise of the claims of unsecured trade creditors prior to bankruptcy in a manner similar to the procedure now available after bankruptcy. This would not involve any interference with the rights of secured creditors and could be provided for in a manner much simpler than the elaborate phraseology of the proposed Part II of the Bill, although some of the provisions of Part II might be usefully included.

As indicative of the amendments of The Companies' Creditors Arrangement Act which the Association believes would be suitable to prevent the recurrence of abuses of the kind that have occurred in the past, there is submitted herewith a draft Bill embodying certain proposed amendments to The Companies' Creditors Arrangement Act and the Association has the following comments to make by way of explanation of the suggested amendments. In short, the proposals involve the addition to the Act of new Parts IV and V providing for a preliminary hearing on the initial application to the Judge for an Order directing meetings to be summoned, the incorporation of detailed provisions in respect of procedure and other matters incidental to the submission of a plan for the consideration of creditors and the subsequent proceedings. These suggestions are discussed in detail below.

It might be suggested that some of the provisions contained in the proposed Parts IV and V could be embodied in General Rules which could be made under Section 17 of the existing Act; however, certain provisions which in one aspect might be considered as involving only matters of procedure in another aspect might be considered as involving matters of substantive law and must therefore be embodied in the Amending Act itself. Moreover, the Association considers it advisable from the point of view of correcting the abuses which have undoubtedly arisen in the administration of the Act and the desirability of laying out a detailed and standardized procedure that the suggested amendments should be incorporated in the Act itself.

The following is an outline of the procedure to be followed under the Act after giving effect to the proposed amendments.

1. The first step is the filing with the court of a copy of the plan and any relevant material on the application for an order directing the summoning of meetings.

2. A preliminary hearing is then directed at which any objections to the plan may be discussed. If the objections are so substantial that it appears that the plan cannot obtain the requisite approvals, the court may dismiss the application; otherwise meetings will be directed to be summoned to consider the plan, either as submitted or as altered or modified to meet any objections.

3. If the plan does not receive the requisite favourable votes that will be an end of the matter. If on the other hand the plan receives the requisite votes an application will be made to the court to sanction the plan. If the plan is sanctioned, it becomes binding.

4. If at a meeting of any class of creditors any amendment to the proposal is made that substantially and adversely affects the interests of any class of creditors, the meeting must adjourn and the Chairman apply to the court for directions as to the notice, etc., of such adjourned meeting.

The only radical departure from the established practice is the provision for a preliminary hearing.

We have the following specific comments to make on the proposed amendments. The references are to the section numbers of the proposed Amending Act and the new Parts proposed to be added.

Section 2—This section adds new Parts IV and V, assigning section numbers which continue after the last section (20) of the Act.

Part IV

21. Under the existing practice it is possible and sometimes happens that secured creditors who may be vitally affected by a plan hear nothing about it until they receive the notice of meeting. This section makes it requisite that at least representatives of all classes concerned receive notice of the plan proposed and be given an opportunity on adequate information to attend and raise any objections they may have to the proposals before the meetings are actually summoned.

22. Upon the preliminary hearing the court is to hear objections.

23. Adjournments of the preliminary hearing may be ordered.

24. If no objections are raised at the preliminary hearing, the proceedings will be of a formal nature and the court will order the summoning of meetings.

25. If, on the other hand, the objections taken on the preliminary hearing are substantial and it appears that the plan will be successfully opposed, the court may dismiss the application. Thus the expense of holding meetings at which the plan is certain to be defeated is obviated. An order dismissing the application is subject to appeal.

26. This section is designed to prevent several plans being put forward by different creditors of the same class.

27. Where the compromise requires the transfer of the assets to a new company, the debtor company might refuse to execute the requisite conveyances. The court is authorized to make an order vesting the assets in the new company.

Part V

28. It has been found that meetings are sometimes called without adequate information being furnished to the creditors attending or that the notice is insufficient or that the chairman is not always a person who will see that the meetings are fairly conducted.

29, 30 & 31. There have sometimes been abuses in the solicitation of instruments of proxy by irresponsible persons or by persons having a special interest which is not disclosed. These sections are designed to secure the necessary disclosure in the solicitation of instruments of proxy.

32. This section specifies the procedure to be followed at meetings. These provisions are designed to remove difficulties to which creditors are now subjected under existing practice.

Subsection (3) supplements the procedure available under section 11 of the Act, which is inadequate.

Subsections (4) and (5) are designed to prevent a radically changed plan from being voted on and approved with the use of instruments of proxy given pursuant to notice of a meeting called to consider the plan as originally proposed.

33. The Act does not now require notice to dissentients of the application to the court to sanction the plan. This section adopts the corresponding provisions of The Companies Act, 1934.

34 & 35. In some cases the preparation and carrying into effect of a plan of reorganization will involve substantial expenses. It has been thought desirable to adopt provisions which will make such expenses subject to review by the court and also to adopt provisions so that in a proper case expenses may be incurred and payment thereof provided for notwithstanding that the plan may eventually

not become effective. At the same time it has been thought desirable to give specific directions to the court to disallow excessive costs or any costs at all to interests not entitled to costs.

36. This section is desirable so that there may be no doubt as to the power of the court to require production of records or information which may be in the possession or control of a person who is not a direct party to the proceedings.

37. If orders of an interlocutory nature are subject to appeal the reorganization may be unduly delayed. On the other hand there must of necessity be provision for appeal where the rights of parties are finally disposed of. Accordingly, a distinction is drawn between orders which are to be appealable and those which are not to be appealable. The orders which it is considered should not be subject to appeal are those directing the holding of meetings (sections 3 and 4 of the Act and new Section 28); orders with respect to the procedure on the preliminary hearing (new sections 21-24 inclusive); vesting orders (new section 27); orders giving directions in connection with adjournments (subsections (4) and (5) of new section 32); orders directing notice to dissentients (new section 33); and orders with regard to expenses of the plan (new section 34); orders directing production (new section 36).

38. Provision is made for the making of orders directing that meetings be either proceeded with or adjourned pending appeal. Such orders are not to be subject to appeal.

39. It has been found that in some cases trading companies have put forward a plan which resulted in cutting down the claims of creditors without any real intention of carrying out such plan. Later on, after new creditors' claims have been created, a new plan is proposed, when former creditors are at a disadvantage as against new creditors because their original claims have already been reduced. The new section puts an obstacle in the way of this practice by preventing the debtor company itself from submitting a new proposal during a two-year interval.

40. The requirement that a copy of the order sanctioning the plan and a copy of the plan itself should be forwarded to the Dominion Statistician is along the lines of the similar requirements in the Winding-up Act.

Section 3—This section provides that the Amending Act is not to affect pending proceedings.

The Association has given consideration to the provisions of Part II of Bill A5 and submits that the provisions of the said Part are not suitable for effecting a reorganization of a large public company with issues of bonds and shares largely distributed in the hands of the public. The securities and shares of such companies are usually distributed through one or more houses of investment dealers and in most cases substantial amounts of the securities and shares are held by life insurance companies, investment trusts, trust companies and similar institutions. The proceedings for reorganization of such a company are usually initiated by representatives of the issuing houses and institutional holders either through the creation of protective committees on behalf of bond and share holders or through informal discussions between representatives of the chief security holders, issuing houses, representatives of the trustee for the bondholders and the directors of the company. The negotiations leading to the formulation of a plan of reorganization are usually extended and involve extensive and minute investigation of the affairs of the company in question. The provisions of Part II of Bill A5 require the commencement of proceedings for reorganization by the submission of the plan of reorganization to a licensed trustee who is thereupon required to make an investigation of the affairs of the

company concerned. In the cases of companies such as those under discussion, such an investigation would in most cases be entirely superfluous, because of the work already done by the committees or other persons negotiating the plan, and such a superfluous investigation would necessarily entail a considerable overlapping of work and in most cases considerable unnecessary expense. Moreover, when negotiations with the various classes of investors have reached the point when a plan of reorganization can be formally prepared, the carrying through of the plan is often a matter of great urgency in the interests of all concerned. The Provisions of the proposed Part II contemplating successive investigations at various stages of the proceedings might easily lead to delays resulting in the abandonment of even the most advantageous plan.

One of the basic principles of the existing Bankruptcy Act is the preservation of the rights of secured creditors. Part II of the Bill contemplates that the rights of such creditors can be compromised by means of the procedure defined therein. Such procedure, however, is quite inappropriate to the purpose as is shown by the provisions of the proposed section 104 which requires a secured creditor to value his security before becoming entitled to vote at any meeting. No effective meeting of secured creditors such as bondholders could therefore be held and no reorganization of a company with bonds outstanding could be made under Part II without extensive amendments to procedure and in particular to section 104. No such amendments are recommended, as in the opinion of the Association the existing provisions of the Bankruptcy Act preserving the rights of secured creditors should be left undisturbed.

Although the above are the basic objections of the Association to the use of proceedings under the Bankruptcy Act for the purpose of adjusting the rights of investors on the reorganization of a public company, the Association without examining all of the provisions of Part II of Bill A5 in detail wishes to point out the following among other respects in which the Bill as drawn is unsuitable for use in such reorganizations:—

(*a*) Section 12 (1) (*c*) requires a trustee in calling a meeting to forward to all of the creditors a list of the creditors affected by the proposal with their addresses and the amounts of their claims as known or as shown by the company's books, and subsection (2) requires that in the case of a corporation the trustee shall send to each shareholder, bondholder and debenture holder affected by the proposal the documents referred to in subsection (1), and in addition on request a list of such share, bond or debenture holders, showing in the case of shareholders the number of shares of stock subscribed for by each shareholder with the unpaid balance, if any, due thereon, and in the case of bond or debenture holders the serial number of the bonds or debentures held by each of them with the amount of principal and interest to be shown separately due thereon.

In the first place most issues of bonds or debentures of large public companies in Canada are in bearer form and it is utterly impossible to prepare a list of such bondholders. In many cases shares are held in the form of share warrants, in which case the same remarks apply to the list of shareholders.

Secondly, the preparation of lists of bond and share holders, if it were possible, and the distribution of such lists to any person requesting them, would in the case of many of the public companies whose bonds and shares are widely distributed and held by several thousand individuals involve an expense entirely out of proportion to any benefit to be derived therefrom.

(*b*) As mentioned above, reorganizations of large public companies are usually initiated through formal or informal committees of security

holders and the reports of such committees appear to the Association to be of greater value to the security holders than any material required to be furnished under the provisions of Section 12 of Bill A5.

(*c*) Section 22 of Bill A5 appears to us to raise difficult constitutional questions in so far as it relates to corporations incorporated otherwise than by or under an Act of the Parliament of Canada.

(*d*) The Association has grave doubts as to the wisdom of the provisions of Section 23 of Bill A5 enabling the court to appoint a committee to propound a scheme of reorganization where for one reason or another it has been found impossible to effect a reorganization in the ordinary course. It seems to the Association that instead of being useful in assisting the exceptional reorganization where an agreement could not be effected, it would tend to render other reorganizations more difficult in that classes of security holders or share holders would be inclined to refuse to approve of a reorganization which did not particularly favour their class with a view to the appointment of a committee on which they would be represented and which they would hope would provide more favourable treatment.

As intimated above, the foregoing comments are not intended to be an exhaustive criticism of the provisions of Part II of Bill A5, but merely indicate some of the outstanding points which render the draft Bill unsuitable for the reorganization of a large public company.

The Association understands that some suggestion has been made that the Winding-up Act should be repealed and that all the matters which would have come under that Act should be dealt with under the Bankruptcy Act. While the Association is not in a position to compare the provisions of the two Acts, it has been our experience that large public companies which are in financial difficulties are nearly always dealt with under the Winding Up Act and proceedings under that Act are to our knowledge well suited for coordination with receivership actions under Trust Deeds securing bonds and proceedings under the Companies' Creditors Arrangement Act. The Association doubts whether such proceedings could be as satisfactorily combined with proceedings under the Bankruptcy Act and submits that most careful consideration should be given before the Winding-up Act is repealed.

Respectfully submitted,

THE DOMINION MORTGAGE & INVESTMENTS ASSOCIATION.

J. E. Fortin,
Secretary-Treasurer.

DRAFT BILL submitted by the Dominion Mortgage and Investments Association in its Brief presented to the Senate Committee on Banking and Commerce respecting Bill A5 "An Act Respecting Bankruptcy," June 20, 1946.

AN ACT TO AMEND THE COMPANIES' CREDITORS ARRANGEMENT ACT, 1933

BILL

1933, c.36

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short title

1. This Act may be cited as The Companies' Creditors Arrangement Act Amendment Act, 1946.

2. The said Act is hereby amended by adding thereto the following:—

Part IV

Duties of court on application under sections three and four

21. Upon the application to the court under sections three or four the court

Material to be filed

(1) shall require to be filed with it a copy of the compromise or arrangement with respect to which the application is made, a statement, verified by affidavit, setting forth the circumstances under which and the person or persons by whom the compromise or arrangement has been prepared, particulars as to the class or classes of creditors and shareholders and other persons (if any) consulted in the preparation thereof, and, unless the court otherwise orders, copies verified as being true copies of all financial statements, appraisals, reports and other material documents referred to in the compromise or arrangement;

Preliminary hearing

(2) shall direct a preliminary hearing (hereinafter referred to as the "preliminary hearing") for the consideration of the application, and shall fix the date, time and place for the preliminary hearing;

Statement to be filed

(3) shall require the filing with the court of a statement as of such date and verified in such manner as the court may prescribe, showing the creditors or classes of creditors, as the case may be, affected by the compromise or arrangement proposed, with the name and last known address of each such creditor as shown by the books of the debtor company and the amount of his claim stating whether such claim is secured or unsecured, in whole or in part (and if secured the nature of the security), provided that, in the case of claims represented by securities or obligations payable to bearer, a description of the securities or obligations with particulars of the aggregate amount, the rate of interest and the nature of the security, if any, shall be sufficient and provided further that, if the application is made by a creditor of the debtor company, the court may dispense, in whole or in part, with the requirements of this subsection;

Notice of preliminary hearing

(4) shall prescribe the form and period of notice of the preliminary hearing to be given, the persons to whom such notice shall be given, the manner of giving notice, the material to accompany such notice and the place or places where copies of such material may be obtained by any person to whom notice by advertising is directed.

Notice to others than creditors or shareholders

(5) may direct notice of the preliminary hearing to be given to any person who may be the beneficial owner of or may be otherwise interested in any claim against or share in the capital stock of the debtor company;

Preliminary hearing requisite before summoning of meetings

(6) Notwithstanding sections three or four shall not order any meeting or meetings to be summoned until the preliminary hearing shall have been concluded.

Objections

22. Upon the preliminary hearing the court shall hear any objections taken to the compromise or arrangement as proposed, may permit alterations or

modifications, may take evidence and may direct the preparation and filing with the court of such reports, financial statements, appraisals or other data as the court may deem requisite for the purposes of the preliminary hearing.

Adjournment

23. The court may direct the adjournment, from time to time, of the preliminary hearing without further notice or may direct the giving of notice of such adjourned preliminary hearing, not only to the persons to whom notice was directed to be given pursuant to section twenty-one but also to others.

Summoning of meetings

24. If no objections are sustained at the preliminary hearing to the compromise or arrangement proposed, then the court may order a meeting or meetings to be summoned, as permitted by sections three or four or both sections, as the case may be, for the consideration of the compromise or arrangement. Any such meeting may be ordered to be held at some place outside of Canada if the court, in its discretion, determines that, having regard to all the circumstances, such meeting should or may more conveniently be held at such place.

Dismissal of application

25. If, on the preliminary hearing, the court shall determine that a compromise or arrangement, to which objection has been taken, is not practicable or that such objections are so substantial that no meeting or meetings should be ordered to be summoned, the court may make an order dismissing the application. Such order shall not preclude or prejudice any future application under sections three or four.

Restriction on applications by creditors of the same class

26. Where an application has been made by a creditor under sections three or four no application may be made to any court by any other creditor of the same class for an order directing the summoning of a meeting or meetings in respect of any other or an amended compromise or arrangement unless the first mentioned application shall have been dismissed.

Vesting order

27. Where a compromise or arrangement provides for the transfer of the assets and undertaking (or any part thereof) of the debtor company to a transferee, then the court may, upon sanction by it of the compromise or arrangement under section five, make such vesting order or orders or may direct such conveyances and transfers to be made as shall be requisite for such purpose.

Part V

28. Upon the making of an order under sections three or four

(1) the order for the summoning of the meeting of creditors or classes of creditors and of shareholders or classes of shareholders (if the court directs a meeting or meetings of the shadeholders to be summoned)

Notices

(*a*) shall prescribe the form or forms of notices to be sent;

Designation of classes to be summoned

(*b*) shall designate the class or classes of creditors and the class or classes of shareholders (if any) to be summoned, and, if the order provides that more than one class are to meet at the same time and place, the class or classes required to vote separately;

Material to accompany notice

(*c*) shall designate the material to accompany such notice, which shall, in any event, include an explanatory circular, a form of instrument appointing a proxy (which form of instrument shall contain provisions permitting directions to be given as to voting and shall only name therein as proxies persons approved by the court for that purpose) and the latest balance sheet and statement of income and expenditure reported on by the auditors of the debtor company, and may direct other or additional financial statements to be included;

Service of Notice

(*d*) shall specify the manner of serving the notice of meeting or meetings upon the creditors or class or classes of creditors and shareholders (if the court orders a meeting or meetings of shareholders to be summoned) and, with respect to creditors holding securities or obligations payable to bearer or holders of share warrants, may direct notice by advertisement, and, where notice by advertisement is directed such advertisement shall name a place or places where a creditor or holder of a share warrant or his duly appointed agent may secure, without charge, copies of the material prescribed to accompany the notice of such meeting.

Chairman

(2) The court may appoint a person and one or more alternates whose consent to act has been filed, to act as permanent or temporary chairman of the meeting or meetings. In the absence of the appointment of a permanent chairman, one shall be elected when the meeting is called to order.

Solicitation of authorization to vote

29. It shall not be lawful for any person to solicit or knowingly permit the use of his name to solicit any authorization (which expression shall include any instrument appointing a proxy, consent or other authorization) in connection with any compromise or arrangement unless the following information is presented in writing to each solicited person at the time of the first solicitation:—

(1) if the solicitation is by or on behalf of the debtor company, a statement to that effect; or

(2) if the solicitation is not by or on behalf of the debtor company, the name or names of the persons on whose behalf or at whose instance the authorization is being solicited and particulars of the class or classes and aggregate amount of securities, obligations, claims or shares of, against or in the debtor company which are owned or controlled for voting purposes by any such persons; and

(3) if the solicitation is by a person who is entitled to or may receive compensation or reimbursement of expenses for soliciting or recommending the giving of an authorization, a statement to that effect.

Prohibition of misleading solicitation

30. No person shall solicit or knowingly permit the use of his name to solicit any authorization by means of any statement which to his knowledge was at the time and in the light of the circumstances under which it was made false or misleading in any material particular.

Penalty

31. In the event of any contravention of the provisions of sections twenty-nine or thirty any person who knowingly contravenes or permits or authorizes the contravention of said provisions shall be liable on summary conviction to a fine not exceeding five thousand dollars.

Meetings

32. The following provisions shall apply to any meeting or meetings ordered to be summoned pursuant to an application made under sections three or four:—

Proxies

(1) It shall not be necessary that a proxy designated by a creditor be himself a creditor in order to attend and vote at the meeting at which he has been appointed to act as proxy.

Voting

(2) Voting on the proposed compromise or arrangement at meetings of creditors and classes of creditors shall in each case be by poll taken in such manner as the chairman directs, and the chairman shall appoint one or more scrutineers to compute the votes at the poll and report to the chairman. Votes may be given by proxy appointed under any proper form of instrument of proxy, notwithstanding that such form may not be the form distributed in accordance with paragraph (*c*) of section twenty-eight.

(3) If a creditor shall have voted in respect of any claim the amount of which has not been established by proof or determined by the court as provided by section eleven of this Act, but has been admitted for voting purposes, the chairman, if he is of opinion that the amount of such claim should not have been admitted, or that there is some question whether the claim should have been admitted as to amount or at all, shall make a report thereon to the court before the application is heard for the sanction of the compromise or arrangement. If a creditor or his proxy at the meeting objects to the voting by a creditor in respect of any claim or to the extent of the recognition of such vote and delivers, within two days from the date of such voting, to the chairman, his objections in writing, the chairman shall file with the court such objections in writing before the hearing of such application. Upon such hearing the court may adjudicate upon such objections and upon such adjudication shall deliver its reasons in writing and if necessary the results of the voting shall be modified accordingly.

Alteration of compromise or arrangement

(4) If any alteration or modification in the compromise or arrangement is proposed at the meeting and the amendment is made would substantially and adversely affect the interests of the creditors or class of creditors summoned, the chairman shall adjourn such meeting for the purpose of seeking a direction of the court in accordance with section six of this Act, and if such adjournment is made all other meetings directed to be summoned in respect of the same compromise or arrangement, the proceedings at which shall not have been concluded, shall be adjourned for the like period.

Direction in case of adjournment

(5) Upon any application to the court under subsection four of this section the court may give directions as to notice of the adjournment and such further directions as to the use at such adjourned meeting of instruments of proxy given in respect of the meeting as originally summoned or the use of new instruments of proxy and such directions as the court may in its discretion deem necessary or advisable.

Notice to dissentients

33. Where a compromise or arrangement has been agreed to by the requisite class or classes of creditors at the meeting or meetings ordered to be summoned

but dissentient votes have been cast by creditors of a class or classes affected, it shall be necessary, unless the court in its discretion otherwise orders, that notice be given to each dissentient creditor of such class or classes in such manner as may be prescribed by the court of the time and place where application will be made to the court for the sanction of the compromise or arrangement.

Expenses of compromise or arrangement

34. The court may, upon such notice to the debtor company and to the creditors or class or classes of creditors affected as the court may direct

(1) approve in advance the incurring of expenditures in connection with the compromise or arrangement proposed including, without limiting the generality of the foregoing, the expense of holding the meeting or meetings, fees and disbursements of solicitors and counsel, and the expenses in connection with any appraisal, report or enquiry;

(2) order that such expenses and any costs allowed by the court may be paid as part of the expenses of the compromise or arrangement out of the assets of the debtor company in priority to the claims of the creditors or classes of creditors whether secured or unsecured affected and notwithstanding that the compromise or arrangement either as proposed or altered at the meeting or meetings may not be agreed to by the creditors or sanctioned by the court.

Costs

35. The court may allow costs. Such costs (subject as hereinafter provided) may be allowed not only to a successful applicant and any person supporting a successful application but also to an unsuccessful applicant and any person bona fide opposing a successful or an unsuccessful application. Provided always that the court shall not allow more than one set of costs to persons representing or purporting to represent the same interests unless the court in its discretion shall determine that the justice of the case so requires.

Production

36. The court may from time to time order any director, officer, employee, auditor, trustee in bankruptcy, or liquidator of the debtor company or any creditor or other person whatsoever to produce or make available any books, records, reports or other information in his possession or under his control which the court may deem requisite or desirable in connection with the submission, consideration, voting upon or carrying into effect of the compromise or arrangement either as proposed or as altered or modified at the meeting or meetings ordered to be summoned.

Appeal

37. Notwithstanding the provisions of this Act no order, direction or decision of the court made under section three, four, twenty-one to twenty-four inclusive, section twenty-seven, section twenty-eight, subsections four or five of section thirty-two, sections thirty-three, thirty-four and thirty-six of this Act shall be subject to appeal.

Holding or adjournment of meetings pending appeal

38. Notwithstanding that leave may be obtained to appeal from an order or decision of the court, the judge appealed from or the court or a judge of the court to which the appeal lies may order that any meeting or meetings, ordered under sections three or four to be summoned, should be held in accordance with the order appealed from or should be adjourned from time to time pending the final disposition of the appeal or should be adjourned sine die and no appeal shall lie from such order.

Default under compromise or arrangement

39. If default shall be made by the debtor company under any compromise or arrangement sanctioned under section five of this Act, no application may be made under sections three or four of this Act by the debtor company until the expiration of two years from the date of the order made under section five of this Act sanctioning such compromise or arrangement.

Documents to be forwarded to Dominion Statistician

40. Upon any compromise or arrangement being sanctioned by the court, the person having the carriage of the order shall promptly after the issuance of the same mail to the Dominion Statistician, Dominion Bureau of Statistics, Ottawa, a true copy of the order including a copy of the compromise or arrangement so sanctioned."

Pending proceedings

3. This Act shall not affect any proceedings under the said Act which were pending on the date when this Act comes into force.